



Australian Capital Territory

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About this republication

The republished law

This is a republication of the *Mental Health Act 1962* effective 1 March 1993 to 13 November 1994.

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Australian Capital Territory

MENTAL HEALTH ACT 1983

As at 1 March 1993

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Australian Capital Territory

MENTAL HEALTH ACT 1983

An Act relating to mental health

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Mental Health Act 1983*.¹

Commencement

2.¹ (1) This Part (other than section 3) and Part II shall come into operation on the date on which this Act is notified in the *Gazette*.

(2) The remaining provisions of this Act shall come into operation on such date as is fixed, or on such respective dates as are fixed, by the Minister of State for Territories and Local Government by notice in the *Gazette*.

Repeal

3. (1) Parts I to IV (inclusive), Part VI, Part IX and sections 170 to 180 (inclusive) of the Lunacy Act of 1898 of the State of New South Wales and the Schedules (other than Schedule One) to that Act shall cease to be in force in the Territory.

(2) The Inebriates Act, 1900 of the State of New South Wales and the Inebriates (Amendment) Act, 1909 of that State shall cease to be in force in the Territory.

- (3) The *Inebriates Act 1938* is repealed.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“convulsive therapy” means a procedure for the induction of an epileptiform convulsion in a person;

“Council” means the Mental Health Advisory Council established by Part III;

“Director” means—

(a) the Director of Mental Health Services; or

(b) if a person is acting as the Director of Mental Health Services by virtue of an appointment under section 10—the person so acting;

“medical practitioner” means a person registered as a medical practitioner under the *Medical Practitioners Registration Act 1930*;

“member” means a member of the Council;

“mental dysfunction” means a disturbance or defect, to a severely disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion;

“Mental Health Officer” means a person appointed to be a Mental Health Officer under section 12;

“neurosurgery” means surgery on the brain of a person for the purpose of treating a pathological condition of the physical structure of the brain;

“prescribed relative”, in relation to a person, means a spouse, parent, guardian, grandparent, uncle, aunt, brother, sister, half-brother, half-sister, cousin, child or adopted child (being a child or adopted child of or above the age of 18 years) of the person;

“prescribed representative”, in relation to a person, means a person appointed under section 22 or 31 to be the prescribed representative of the first-mentioned person;

“psychiatric surgery” means surgery on the brain of a person, other than neurosurgery;

“psychiatrist” means a medical practitioner who holds post-graduate qualifications in psychiatry;

“social breakdown”, in relation to a person, means the condition in which the person’s capacity to—

- (a) obtain and use the goods and services essential to the support of life; and
- (b) make the decisions, and take the actions, essential to an autonomous life,

is so impaired as to cause the person to suffer severe distress or physical, material or emotional deprivation to an extent that is likely to cause lasting and serious harm to the person;

“spouse”, in relation to a person, includes a person with whom the first-mentioned person is cohabiting on a *bona fide* domestic basis but to whom the first-mentioned person is not legally married;

“treatment order” means an order made under Part V, or that order as varied and in force from time to time.

(2) For the purposes of this Act, a person shall not be treated as suffering from mental dysfunction by reason only that he expresses, or refuses or fails to express, an opinion in relation to politics, religion, law or morals or engages, or refuses or fails to engage, in a particular political, religious, lawful, unlawful, moral or immoral activity.

PART II—ADMINISTRATION

Director of Mental Health Services

5. There shall be a Director of Mental Health Services.

Appointment of Director

6. (1) The Director shall be appointed by the Minister.

(2) Subject to this Act, a person appointed under subsection (1) holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment.

(3) A person appointed under subsection (1) holds office on such terms and conditions (if any) with respect to matters not provided for by this Act as the Minister determines, and is eligible for re-appointment.

(4) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Director, and a person shall not be appointed or re-

appointed as the Director for a period that extends beyond the date on which he will attain the age of 65 years.

Eligibility for appointment as Director

7. A person is not eligible to be appointed or hold office as the Director unless he is a psychiatrist.

Resignation

8. A person may resign the office of Director by writing signed by him and delivered to the Minister.

Removal from office

9. (1) The Minister may remove a person from office as Director for misbehaviour or physical or mental incapacity.

(2) If a person holding office as Director—

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (b) ceases to be eligible to hold that office,

the Minister shall remove him from office.

Acting appointment

10. (1) The Minister may appoint a person who is eligible for appointment as Director to act in the office of Director—

- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Director is, or is expected to be, absent from duty or from Australia or is for any reason unable to perform the duties of his office.

(2) A person appointed to act in the office of Director during a vacancy in that office shall not continue so to act after the expiration of the period of 12 months after the occurrence of the vacancy.

(3) An appointment under this section shall be on such terms and conditions as the Minister determines.

(4) The Minister may at any time terminate the appointment of a person appointed to act in accordance with subsection (1).

(5) A person appointed under this section may resign his appointment by writing signed by him and delivered to the Minister.

(6) While a person is acting in the office of Director in accordance with this section, he has, and may exercise, all the powers and may perform all the functions of the Director.

(7) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Delegation

11. (1) The Director may, by instrument and with the approval of the Minister, delegate to a psychiatrist who—

- (a) is a public servant; or
- (b) is engaged by the Territory;

all or any of his or her powers except this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of any law of the Territory, be deemed to have been exercised by the Director.

(3) A delegation under this section does not prevent the exercise of a power by the Director.

Mental Health Officers

12. (1) Subject to this section, the Minister shall appoint such persons to be Mental Health Officers as he thinks necessary for the purposes of this Act.

(2) The Minister shall not appoint a person to be a Mental Health Officer unless the Minister is satisfied that the person—

- (a) is registered as a mental health nurse under the *Nurses Act 1988*; or
- (b) is a psychologist or social worker.

(3) The Minister may at any time terminate the appointment of a person as a Mental Health Officer.

(4) A Mental Health Officer shall perform his functions and exercise his powers under this Act in accordance with the directions of the Director.

PART III—THE MENTAL HEALTH ADVISORY COUNCIL

Advisory Council

13. There is established by this Act a Council by the name of the Mental Health Advisory Council.

Functions of Council

14. The functions of the Council are—

- (a) to advise the Minister with respect to—
 - (i) the prevention of mental dysfunction;
 - (ii) the diagnosis and treatment of mental dysfunction;
 - (iii) the rehabilitation of persons who have suffered, or who are suffering, mental dysfunction;
 - (iv) the fostering of community involvement in the provision of mental health services;
 - (v) the provision of continuing care for persons suffering mental dysfunction; and
 - (vi) such other matters, if any, relating to mental health as are specified by the Minister; and
- (b) to consider, and keep under review, the provision of mental health services.

Membership of Council

15. (1) The Council shall consist of—

- (a) a medical practitioner;
- (b) a person engaged in the practice of clinical psychology;
- (ba) a person registered as a mental nurse under the *Nurses Registration Act 1933*;
- (c) a social worker;
- (d) 2 persons, each of whom is a member of a voluntary association formed in connection with the maintenance of mental health or of a

voluntary association that is concerned with the provision of services to persons who are intellectually handicapped or that is otherwise concerned with mental dysfunction; and

(e) a person engaged in the administration of a hospital.

(2) The members of the Council shall be appointed, as occasion requires, by the Minister.

(3) Subject to this Act, a member holds office for such period, not exceeding 3 years, as is specified in the instrument of his appointment and is eligible for re-appointment.

(4) The performance of the functions of the Council is not affected by reason of there being a vacancy or vacancies in the membership of the Council.

Resignation

16. A member may resign his office by writing signed by him and delivered to the Minister.

Termination of appointment

17. (1) The Minister may remove a member from office by reason of misbehaviour or physical or mental incapacity.

(2) If a member—

(a) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) is convicted in Australia of an offence punishable by imprisonment for one year or longer;

(c) is absent, except on leave granted by the Council, from 2 consecutive meetings of the Council; or

(d) ceases to have the qualification by virtue of which he was appointed,

the Minister shall remove him from office.

Chairman and Deputy Chairman of Council

18. (1) The Minister shall appoint one of the members to be the Chairman of the Council.

(2) The Minister shall appoint one of the members, other than the member appointed to be the Chairman of the Council, to be the Deputy Chairman of the Council.

(3) Where a person holding office as Chairman or Deputy Chairman of the Council ceases to be a member, he shall cease to be the Chairman or Deputy Chairman of the Council, as the case may be.

Meetings of Council

19. (1) The Chairman of the Council shall convene such meetings of the Council as he considers necessary for the performance of its functions, but so that an interval longer than 3 months does not occur between any 2 consecutive meetings.

(2) The Chairman of the Council shall, when so requested by the Minister, convene a meeting of the Council.

(3) The Chairman of the Council shall, on receipt of a request in writing signed by not less than 3 members, convene a meeting of the Council.

(4) A quorum at a meeting of the Council is constituted by 3 members of whom one is the Chairman or Deputy Chairman of the Council.

(5) The Chairman of the Council shall preside at the meetings of the Council at which he is present.

(6) If, at a meeting of the Council, the Chairman of the Council is not present, the Deputy Chairman of the Council shall preside at the meeting.

(7) Questions arising at a meeting of the Council shall be determined by a majority of the votes of the members present and voting.

(8) The member presiding at a meeting of the Council has a deliberative vote only.

Disclosure of pecuniary interest

20. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Council and the member shall not, unless the Minister or the Council otherwise determines—

- (a) be present during any deliberation of the Council with respect to that matter; or
- (b) take part in any decision of the Council with respect to that matter.

(3) For the purpose of the making of a determination by the Council under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Council for the purpose of making the determination; or
- (b) take part in the making by the Council of the determination.

(4) Where a member fails, without reasonable excuse, to comply with the requirements of this section, the Minister shall terminate the appointment of the member.

PART IV—EMERGENCY PROCEDURES

Emergency detention

21. (1) Where a medical practitioner or an authorized Mental Health Officer has reasonable grounds for believing that—

- (a) a person is suffering from mental dysfunction;
- (b) the condition of the person gives rise to an immediate and substantial risk of actual bodily harm to the person or to another person; and
- (c) the person will not accept treatment which the medical practitioner or Mental Health Officer reasonably believes necessary to avert that risk,

the medical practitioner or Mental Health Officer may take the person to a mental health facility conducted by the Territory and, for that purpose, may use such force and assistance as he considers necessary.

(2) Where a police officer has reasonable grounds for believing that—

- (a) a person is suffering from mental dysfunction; and
- (b) the condition of the person gives rise to an immediate and substantial risk of actual bodily harm to the person or to another person,

the police officer shall take the person to a mental health facility conducted by the Territory and, for that purpose, may use such force and assistance as he considers necessary.

(3) A police officer, a medical practitioner or an authorized Mental Health Officer may, for the purposes of taking a person to a mental health facility conducted by the Territory in pursuance of subsection (1) or (2), enter any premises by force, if necessary, and with such assistance as he thinks necessary, if there are reasonable grounds for believing that the person is at those premises.

(4) Where a person is taken to a mental health facility conducted by the Territory under subsection (1) or (2), the Director shall, subject to this Part, detain the person at that facility and while the person is so detained—

- (a) may keep the person in such custody at that facility as the Director thinks appropriate in the circumstances;
- (b) may subject the person to such restraint as is reasonable and necessary to prevent the person from doing harm to himself or to any other person;
- (c) shall cause a medical practitioner to conduct a physical and psychiatric examination of the person as soon as practicable; and
- (d) may cause to be administered to the person such treatment (if any) as is necessary to avert any immediate and substantial risk of the person doing harm to himself or to any other person.

(5) A police officer, a medical practitioner or an authorized Mental Health Officer who takes a person to a mental health facility conducted by the Territory in pursuance of subsection (1) or (2) shall prepare a statement in writing setting out the action taken by him in pursuance of that subsection and containing details of—

- (a) the name and address (if known) of the person;
- (b) the date and time when the person was so taken to the facility;
- (c) the reasons why the police officer, medical practitioner or Mental Health Officer took the action; and
- (d) the extent (if any) to which force or assistance was used in entering any premises or in taking the person to the facility;

and shall give the statement to the Director as soon as practicable after the person is so taken to the facility.

(6) Where a person is detained under subsection (4), the Director shall—

- (a) prepare and maintain a record of the details of any action taken under subsection (4) in relation to that person;
- (b) cause a written statement to be given to the person and to his prescribed representative setting out the powers and duties of the Director in relation to persons who are so detained and of the right of the person and his prescribed representative to apply to the Magistrates Court for release from that detention; and
- (c) where, in the opinion of the Director, the person or his prescribed representative is unable to understand the written statement given to him in pursuance of paragraph (b)—take all reasonable steps to ensure that an oral explanation is given to the person or to his prescribed representative, as the case requires, of the contents of the statement.

(7) In this section, “authorized Mental Health Officer” means a Mental Health Officer who is authorized in writing by the Director for the purposes of this section.

Appointment of prescribed representative

22. (1) Subject to subsection (4), the Director shall, as soon as practicable after a person is detained under section 21, appoint—

- (a) a person nominated by the first-mentioned person; or
- (b) where the first-mentioned person refuses or fails, or is unable, to nominate a person or where the person so nominated does not consent to the appointment—a person chosen by the Director,

to be the prescribed representative of the first-mentioned person.

(2) The appointment of a person under this section to be the prescribed representative of another person ceases to have effect if—

- (a) the person so appointed notifies the Director, either orally or in writing, that he does not wish to be the prescribed representative of that other person; or
- (b) that other person notifies the Director, either orally or in writing, that he does not wish the person so appointed to be his prescribed representative.

(3) Subject to subsection (4), where—

- (a) the Director has appointed a person to be the prescribed representative of another person under this section; and

- (b) that appointment ceases to have effect or is terminated under section 22A,

the Director shall, as soon as practicable after that appointment so ceases to have effect or is so terminated, appoint—

- (c) a person nominated by that other person; or
- (d) where that other person refuses or fails, or is unable, to nominate a person or where the person so nominated does not consent to the appointment—a person chosen by the Director,

to be the prescribed representative of that other person.

(4) The Director shall not appoint a person nominated or chosen in accordance with subsection (1) or (3) to be the prescribed representative of another person unless the person so nominated or chosen consents to the appointment.

Termination of appointment of prescribed representative

22A. At any time during the hearing of an application under this Act the Magistrates Court may, of its own motion or upon the application of a prescribed relative of a person, terminate the appointment of a prescribed representative appointed under paragraph 22 (1) (b) on the grounds that the prescribed representative—

- (a) is not a fit and proper person to be the prescribed representative of the person; or
- (b) has failed to perform the functions of a prescribed representative.

Application for treatment order in respect of detained person

23. Where the Director is satisfied that an application should be made for a treatment order in respect of a person detained under section 21, the Director shall cause an application for a treatment order in respect of that person to be made as soon as practicable, but in any event not later than 72 hours after the detention of the person commenced.

Release of person from emergency detention

24. (1) A person who is detained under section 21 shall be released from that detention if—

- (a) the Director is satisfied that there are no reasonable grounds for believing that—

- (i) the person is suffering from mental dysfunction;
 - (ii) the condition of the person gives rise to an immediate and substantial risk of actual bodily harm to the person or to another person; or
 - (iii) the person will not accept treatment which the Director reasonably believes necessary to avert that risk;
- (b) the Director does not cause an application for a treatment order in relation to the person to be made before the expiration of the period of 72 hours after the detention of the person commenced;
 - (c) the Magistrates Court makes or refuses to make a treatment order in relation to the person; or
 - (d) the Magistrates Court makes an order under section 25 that the person be released from that detention.

(2) Nothing in subsection (1) shall be taken to affect the power of the Director to keep a person in his custody in accordance with a treatment order containing a direction referred to in paragraph 35 (1) (a).

Court may order release of person

25. (1) The Magistrates Court may, on application by a person detained under section 21 or by the prescribed representative of the person, if it is satisfied that—

- (a) an application for a treatment order in respect of the person has not been made; and
- (b) there are no reasonable grounds for believing that the person is likely to do actual bodily harm to himself or to any other person,

order that the person be released from that detention.

(2) The Director shall provide a person detained under section 21 with such assistance as is necessary in order to enable the person to make an application under subsection (1).

Communications by detained persons

26. (1) A person who is detained under section 21 is entitled, upon making a request to the Director or to another person performing duties in connection with the detention of the person, to be provided with facilities for preparing a written communication and for enclosing that written communication in a sealed envelope.

(2) Where a person who is detained under section 21 delivers to the Director, or to another person performing duties in connection with the detention of the person, a sealed envelope addressed to any person, the Director shall cause the sealed envelope to be forwarded, without delay, to that last-mentioned person at the address appearing on the envelope.

(3) The Director shall, as far as is reasonably practicable, afford to a person who is detained under section 21, reasonable opportunities to communicate with other persons, other than by means of a written communication.

PART V—TREATMENT ORDERS**This Part not to affect operation of Part VII**

27. Nothing in this Part affects the operation of Part VII.

Application for treatment order

28. (1) Subject to this section, an application for a treatment order in respect of a person shall be made to the Magistrates Court.

(2) Where a person is subject to a treatment order made under this Part, an application for a further treatment order in respect of that person shall be made to the Supreme Court.

(3) An application for a treatment order under subsection (1) in respect of a person shall be made jointly by a medical practitioner and a Mental Health Officer.

(4) An application for a treatment order under subsection (2) in respect of a person shall be made jointly by a psychiatrist and a Mental Health Officer and may be made at any time before the expiration of the treatment order made by the Magistrates Court or the last treatment order made by the Supreme Court in respect of that person, as the case may be.

(5) An application made under this section shall specify the grounds on which the treatment order is sought.

- (6) The parties to an application for a treatment order are—
- (a) the applicants;
 - (b) the Director;
 - (c) the person in respect of whom the order is sought;
 - (d) the prescribed representative of that person; and
 - (e) any person upon whom the application has been served in pursuance of directions given under subsection 29 (2).

Service of application

29. (1) An application for a treatment order shall be served by the applicants on each of the other parties to the application.

(2) Where—

- (a) an application for a treatment order has been served on the person in respect of whom the order is sought; and
- (b) the court to which the application is made is of the opinion that it is desirable, for the proper protection of the interests of the person, that the application be served on some other person,

the court may give such directions as it thinks fit with respect to the service of the application on that other person.

(3) An application for a treatment order may be served on a person—

- (a) by delivering a copy of the application to the person personally; or
- (b) by leaving a copy of the application at the last known place of residence or business of the person with some other person who is apparently resident or employed at that place and apparently over the age of 16 years.

(4) The Director shall cause notice in writing of the date on which, and the time and place at which, an application for a treatment order will be heard to be given to the person in respect of whom the order is sought not less than 24 hours before the time of the hearing.

(5) Evidence of service of an application under this section may be given by affidavit.

(6) The provisions of subsection 20 (5) and section 198 of the *Magistrates Court (Civil Jurisdiction) Act 1982* do not apply to or in relation to an application to the Magistrates Court under subsection 28 (1).

Restriction of applicants

30. A person may not join in making an application for a treatment order if—

- (a) the making of the order would be likely to result in financial gain to the person, or to the spouse of the person, otherwise than by way of reasonable fees charged in the ordinary course of the practice of his profession; or
- (b) the person, or the spouse of the person, is a prescribed relative of the person in respect of whom the order is sought.

Appointment of prescribed representative

31. (1) Subject to subsection (4), where an application is made for a treatment order in respect of a person and there is no prescribed representative of that person, the Director shall, as soon as practicable after the application is made, appoint—

- (a) a person nominated by the person in respect of whom the application is made; or
- (b) where the person in respect of whom the application is made refuses or fails, or is unable, to nominate a person or where the person so nominated does not consent to the appointment—a person chosen by the Director,

to be the prescribed representative of the person in respect of whom the application is made.

(2) The appointment of a person under this section to be the prescribed representative of another person ceases to have effect if—

- (a) the person so appointed notifies the Director, either orally or in writing, that he does not wish to be the prescribed representative of that other person; or
- (b) that other person notifies the Director, either orally or in writing, that he does not wish the person so appointed to be his prescribed representative.

(3) Subject to subsection (4), where—

- (a) the Director has appointed a person to be the prescribed representative of another person under this section; and
- (b) that appointment ceases to have effect or is terminated under section 31A,

the Director shall, as soon as practicable after that appointment so ceases to have effect or is so terminated, appoint—

- (c) a person nominated by that other person; or
- (d) where that other person refuses or fails, or is unable, to nominate a person or where the person so nominated does not consent to the appointment—a person chosen by the Director,

to be the prescribed representative of that other person.

(4) The Director shall not appoint a person nominated or chosen in accordance with subsection (1) or (3) to be the prescribed representative of another person unless the person so nominated or chosen consents to the appointment.

Termination of appointment of prescribed representative

31A. At any time during the hearing of an application under this Act the Magistrates Court or the Supreme Court, as the case requires, may, of its own motion or upon the application of a prescribed relative of a person, terminate the appointment of a prescribed representative appointed under paragraph 31 (1) (b) on the grounds that the prescribed representative—

- (a) is not fit and proper person to be the prescribed representative of the person; or
- (b) has failed to perform the functions of a prescribed representative.

Explanation of application to be given

32. (1) Where an application is made for a treatment order in respect of a person, the Director shall cause a written statement to be given to the person and to his prescribed representative setting out particulars of—

- (a) the nature of the application;
- (b) the nature and effects of the order sought;
- (c) the powers and duties of the Director in relation to persons who are subject to treatment orders; and

- (d) the right of the person and his prescribed representative to appeal against the making of any treatment order or to apply for the variation or discharge of such an order.

(2) Where, in the opinion of the Director, the person or his prescribed representative is unable to understand the written statement given to him in pursuance of subsection (1), the Director shall take all reasonable steps to ensure that an oral explanation is given to the person or to his prescribed representative, as the case requires, of the contents of the statement.

Person in custody of Director to be present at hearing

33. (1) Where an application is made for a treatment order in respect of a person who is detained by, or in the custody of, the Director, the Director shall cause the person to be present during the hearing of the application unless the court hearing the application is satisfied that in the circumstances the presence of the person during the hearing would not be practicable.

(2) For the purpose of carrying out his duty under subsection (1), the Director may use such assistance as he thinks necessary.

Treatment orders

34. (1) Where, on an application for a treatment order made under subsection 28 (1), the Magistrates Court is satisfied that—

- (a) the person in relation to whom the application is made is suffering from mental dysfunction;
- (b) by reason of that mental dysfunction—
 - (i) the person has engaged, and is continuing to engage, in behaviour that has resulted, or is likely to result, in actual bodily harm to himself or to another person;
 - (ii) the person is likely to engage in behaviour that is likely to result in actual bodily harm to himself or to another person; or
 - (iii) the person is in a condition of social breakdown; and
- (c) the person has refused adequate treatment for that mental dysfunction, or has failed to accept such treatment within a reasonable time after it is offered to him, or is, in the opinion of the Court, incapable of weighing for himself the considerations involved in making a decision whether to accept such treatment,

the Court may make a treatment order in respect of that person.

(2) Subject to subsection (3), where, on an application for a treatment order made under subsection 28 (2), the Supreme Court is satisfied that—

- (a) the person in relation to whom the application is made is suffering from mental dysfunction;
- (b) by reason of that mental dysfunction—
 - (i) the person has engaged, and is continuing to engage, in behaviour that has resulted, or is likely to result, in actual bodily harm to himself or to another person;
 - (ii) the person is likely to engage in behaviour that is likely to result in actual bodily harm to himself or to another person; or
 - (iii) the person is in a condition of social breakdown; and
- (c) the person will require adequate treatment for that mental dysfunction when the treatment order to which he is subject ceases to have effect and the person has expressed an intention of refusing, or is likely to refuse, that treatment or the person is, in the opinion of the Court, incapable of weighing for himself the considerations involved in making a decision whether to accept such treatment,

the Court may make a treatment order in respect of that person.

(3) The Supreme Court shall not make a treatment order on an application made under subsection 28 (2) unless the application is supported by the evidence of a psychiatrist who is not an applicant.

Requirements of treatment order

35. (1) A treatment order shall direct—

- (a) that the person in respect of whom the order is made remain in the custody of the Director at such premises as are from time to time determined by the Director throughout the period for which the order has effect; or
- (b) that the person attend, in accordance with the directions of the Director, at such place as is from time to time determined by the Director for the purpose of undergoing treatment.

(2) Subject to this Act, a treatment order shall specify—

- (a) the period during which the order is to have effect; and

- (b) where the order includes a direction referred to in paragraph (1) (a), the extent (if any) to which communication by the person with any other person, other than by means of written communication, may be restricted while the order remains in force.

(3) Where a court makes a treatment order that includes a direction referred to in paragraph (1) (a), the court may, in the treatment order, give to the Director such directions (if any) as it thinks necessary to ensure that a responsible person, being a prescribed relative or the prescribed representative of the person to whom the order relates, is informed of the making of the order and of the premises at which the person is from time to time kept.

(4) A treatment order does not authorize the removal of a person from custody in which that person is held under any law in force in the Territory.

(5) Where a court, by an order or warrant, commits a person who is in the custody of the Director in pursuance of a treatment order to the custody of a person other than the Director, the Director shall, on the production of the order or warrant, deliver the person to a person acting in the execution of that order or warrant.

Period of effect of treatment order

36. (1) The Magistrates Court shall not specify in a treatment order, for the purposes of paragraph 35 (2) (a), a period of more than 28 days.

(2) Where the Supreme Court makes a treatment order in respect of a person before the expiration of a treatment order made by the Magistrates Court in respect of that person, the order made by the Supreme Court shall take effect on the expiration of the second-mentioned order and the Supreme Court shall not specify, for the purposes of paragraph 35 (2) (a), a period of more than 3 months from the date on which the order made by it takes effect.

(3) Where the Supreme Court makes a treatment order in respect of a person before the expiration of a previous treatment order made by the Supreme Court in respect of that person, the first-mentioned order shall take effect on the expiration of the second-mentioned order and the Supreme Court shall not specify, for the purposes of paragraph 35 (2) (a), a period of more than 12 months from the date on which the first-mentioned order takes effect.

Treatment of persons under treatment orders

37. (1) Subject to this section, where a treatment order is made in relation to a person, the Director is authorized to administer, or cause to be

administered, to that person such treatment for the mental dysfunction suffered by that person as the Director thinks necessary, other than—

- (a) treatment that produces, or is likely to produce, an irreversible physical lesion;
- (b) convulsive therapy; or
- (c) treatment that has, or is likely to have, the effect of subjecting the person to whom it is administered to undue distress or deprivation, having regard to the benefit likely to result from the administration of the treatment.

(2) The Director shall not administer, or cause to be administered, to a person in respect of whom a treatment order is in force any treatment for the purposes of conducting a clinical experiment or any treatment the effects of which are not known or the beneficial effects of which have not been demonstrated clinically.

Custodial treatment order—powers of Director

38. (1) This section applies to a treatment order that directs that the person to whom the order relates remain in the custody of the Director throughout the period for which the order has effect.

(2) Subject to this Act, where a treatment order to which this section applies is made in relation to a person—

- (a) the Director, a medical practitioner or a Mental Health Officer is authorized to take the person to premises specified by the Director and, for that purpose, may use such force and assistance as he thinks necessary;
- (b) the Director is authorized to keep the person in such custody at those premises as he thinks appropriate for the period during which the order has effect;
- (c) the Director is authorized to subject the person to such confinement as is reasonable and necessary to prevent the person from doing harm to himself or to any other person or to ensure that the person remains in the custody of the Director in accordance with the order; and
- (d) the Director is authorized to subject the person to such restraint (other than confinement) as is reasonable and necessary to prevent the person from doing harm to himself or to any other person or to permit treatment to be administered to the person.

(3) For the purpose of the exercise of the authority conferred by paragraph (2) (a), the Director, a medical practitioner or a Mental Health Officer is authorized to enter, by force if necessary, and with such assistance as he thinks necessary, any premises if there are reasonable grounds for believing that the person to whom a treatment order relates is at those premises.

Non-custodial treatment order—powers of Director

39. (1) This section applies to a treatment order other than a treatment order to which section 38 applies.

(2) Where a treatment order to which this section applies is made in relation to a person, the Director is authorized to give to that person directions with respect to the attendance by the person at the place specified from time to time by the Director for the purpose of undergoing treatment.

Explanation of treatment to be given

40. (1) Where a treatment order is made in respect of a person, the Director or the medical practitioner who is to administer treatment to that person shall, before that treatment is administered, explain to that person the nature and the effects, including the side-effects (if any), of the treatment.

(2) Where, in the opinion of the Director or medical practitioner, a person would be unable to understand an explanation given for the purpose of subsection (1), the Director or medical practitioner may give the explanation required by that subsection to the prescribed representative of the person.

Restriction of communication

41. (1) Subject to this Act, where—

- (a) a person is in the custody of the Director in accordance with a treatment order;
- (b) the treatment order authorizes the imposition of restrictions on communication between the person to whom the order relates and other persons; and
- (c) there are reasonable grounds for believing that it is desirable, in the interests of the effective treatment of the person, that communication between that person and other persons be restricted,

the Director may, subject to the order, impose such restrictions upon communication by that person with other persons as are reasonable and necessary to avoid prejudicing the effectiveness of that treatment.

(2) Where restrictions are imposed on a person to whom a treatment order relates in pursuance of subsection (1), the Director shall, as soon as is practicable, cause a medical practitioner to explain to that person and to the prescribed representative of the person—

- (a) the nature of the restrictions;
- (b) the period during which the restrictions will remain in effect; and
- (c) the reasons for the imposition of the restrictions.

(4) Restrictions imposed under subsection (1) cease to have effect at the expiration of a period of 7 days, but nothing in this subsection prevents the imposition of further restrictions immediately after the previous restrictions cease to have effect.

Written communication

42. (1) A person in the custody of the Director in accordance with a treatment order is entitled, upon making a request to the Director or to another person performing duties in connection with the custody of the person, to be provided with facilities for preparing a written communication and for enclosing that written communication in a sealed envelope.

(2) Where a person in the custody of the Director in accordance with a treatment order delivers to the Director, or to another person performing duties in connection with the custody of the person, a sealed envelope addressed to any person, the Director shall cause the sealed envelope to be forwarded, without delay, to that last-mentioned person at the address appearing on the envelope.

Variation and discharge of treatment orders

43. (1) Subject to this section, a court which has made a treatment order in respect of a person may, on application made under this section, vary that order, other than by extending the period specified in the order for the purposes of paragraph 35 (2) (a), or discharge the order.

(2) Subject to subsection (3), an application for variation or discharge of a treatment order may be made by the person to whom the treatment order relates, by the prescribed representative of that person or by a medical practitioner.

(3) An application for variation of a treatment order shall be made jointly by a medical practitioner and a Mental Health Officer if the variation sought

includes the substitution for a direction referred to in paragraph 35 (1) (b) of a direction referred to in paragraph 35 (1) (a).

(4) Where an application is made under subsection (3), the court shall not vary the treatment order unless the application is supported by the evidence of a medical practitioner who is not an applicant.

Appeal from Magistrates Court

44. (1) An appeal lies to the Supreme Court from an order made by the Magistrates Court under this Part.

(2) Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to an appeal under subsection (1) as if it were an appeal from a judgment or order of a kind specified in subsection 282C (2) of that Act.

PART VI—CONVULSIVE THERAPY

Restrictions on use of convulsive therapy

45. (1) A person, other than a medical practitioner, shall not administer convulsive therapy to another person unless he is authorized to do so by a medical practitioner.

Penalty: \$1,000.

(2) A medical practitioner shall not administer, or authorize the administration of, convulsive therapy to a person, other than a person in respect of whom a treatment order is in force, unless—

- (a) the person has, by instrument in writing signed by him, and witnessed by a person other than the medical practitioner, consented to the administration of the therapy; and
- (b) convulsive therapy has not been administered to the person on 10 or more occasions since that consent was given.

Penalty: \$1,000.

(3) A medical practitioner shall not administer, or authorize the administration of, convulsive therapy to a person in respect of whom a treatment order is in force unless—

- (a) the Magistrates Court, on application by the Director or medical practitioner, has approved the administration of convulsive therapy to the person; and

- (b) convulsive therapy has not been administered to the person on 10 or more occasions since the Court so approved the administration of convulsive therapy to the person.

Penalty: \$1,000.

(4) The Magistrates Court shall not give its approval under subsection (3) for the administration of convulsive therapy to a person unless the application is supported by the evidence of a psychiatrist who is not an applicant and the Court is satisfied that—

- (a) the administration of the therapy will result in a substantial benefit to the person;
- (b) there is no other form of treatment reasonably available that is likely to result in the same degree of benefit to the person; and
- (c) the person—
 - (i) is capable of weighing for himself the considerations involved in making a decision whether to consent to the administration of the therapy and has, by writing signed by him and witnessed by a person other than the applicant, consented to the administration of the therapy and has not, whether orally or in writing, withdrawn his consent; or
 - (ii) is, by reason of mental dysfunction, incapable of weighing for himself the considerations involved in making a decision whether to consent to the administration of the therapy.

Withdrawal of consent

46. Notwithstanding anything in this Part, where a person who has consented to the administration to him of convulsive therapy in accordance with paragraph 45 (2) (a) or subparagraph 45 (4) (c) (i) withdraws his consent, either orally or in writing, at any time before the therapy is administered, a medical practitioner shall not administer, or authorize the administration of, the therapy to the person.

Penalty: \$1,000.

Administration of convulsive therapy to be recorded

47. (1) A medical practitioner who administers, or authorizes the administration of, convulsive therapy shall make a record of that administration or authorization, as the case may be, and shall deliver that record to a person

employed by the person or authority responsible for the conduct of the hospital at which the therapy is, or is to be, administered.

(2) A person or authority responsible for the conduct of a hospital shall retain a record delivered in accordance with subsection (1) for a period not less than 5 years after the date on which the record is so delivered.

Penalty: \$500.

PART VII—CONTROL OF PSYCHIATRIC SURGERY

Persons subject to treatment orders

48. Psychiatric surgery may be performed on a person in accordance with this Part notwithstanding that a treatment order is in force in relation to the person.

Performance of psychiatric surgery without approval

49. (1) A medical practitioner shall not knowingly perform psychiatric surgery on a person without the approval of the Director.

(2) A medical practitioner shall not perform psychiatric surgery on a person except in accordance with the conditions (if any) to which the approval of the Director is subject.

Penalty: \$5,000 or imprisonment for 12 months, or both.

Application for approval

50. (1) An application for the approval of the Director for the performance of psychiatric surgery shall—

- (a) be made by the medical practitioner by whom the surgery is to be performed;
- (b) be in writing signed by the applicant; and
- (c) be delivered to the Director together with—
 - (i) a statement in writing in accordance with this section stating that the person on whom the surgery is to be performed understands the nature and effects of the surgery and consents to the performance on him of that surgery; or
 - (ii) an order made by the Supreme Court under section 57.

(2) A statement under subparagraph (1) (c) (i) shall be signed by the person on whom the psychiatric surgery is to be performed and witnessed by a person other than the applicant.

Director to submit application to committee

51. (1) Where an application has been made in accordance with section 50 the Director shall, as soon as practicable, submit the application to a committee consisting of—

- (a) a psychiatrist;
- (b) a neurosurgeon;
- (c) a barrister and solicitor;
- (d) a clinical psychologist; and
- (e) a social worker.

(2) The members of a committee for the purpose of subsection (1) shall be appointed by the Minister.

(3) A member of a committee appointed under this section shall be paid such fees and allowances (if any) as are prescribed.

(4) The chairman of a committee constituted under this section shall be the member appointed by the Minister to be chairman of the committee.

(5) The Director shall submit an application to a committee by delivering a copy of the application to the chairman of the committee.

Committee to report on application

52. (1) Where an application has been submitted to a committee, the committee shall—

- (a) consider the application; and
- (b) make a report to the Director in relation to the application.

(2) A committee shall, in a report on an application, recommend—

- (a) whether the Director should approve of the performance of the surgery to which the application relates; and
- (b) if the committee recommends that the Director approve of the performance of that surgery—the conditions (if any) to which that approval should be subject.

Director to act in accordance with report of committee

53. Where a committee has made a report to the Director in relation to an application, the Director shall deal with the application in accordance with the recommendation or recommendations of the committee.

Director may require applicant to produce information and documents

54. (1) The Director may, at the request of a committee, require a medical practitioner who has made an application under section 50 to produce to the Director such information or documents, or both, as the Director specifies.

(2) A requirement under subsection (1) shall be made in writing and delivered to the person to whom it is directed.

(3) Subsection (1) does not authorize the Director to require the production of information or documents other than information or documents relevant to the consideration by a committee of an application under section 50.

(4) Where a requirement has been made under subsection (1), a committee is not required to give further consideration to the application in relation to which the requirement was made until all information and documents specified in the requirement have been produced to the Director.

Meetings of committee

55. (1) Meetings of a committee shall be convened by the chairman of the committee.

(2) Subject to subsection (3), a question arising at a meeting of a committee shall be decided in accordance with the opinion of a majority of the members of the committee.

(3) A committee shall not recommend that the performance of psychiatric surgery be approved by the Director unless the recommendation is supported by the psychiatrist and neurosurgeon who are members of the committee.

Criteria for approval

56. A committee shall not recommend that the Director approve the performance of psychiatric surgery unless the committee is satisfied—

- (a) that there are reasonable grounds for believing that the performance of the surgery will result in substantial benefit to the person on whom it is to be performed; and

- (b) that all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit that person.

Order by Court

57. Where the Supreme Court, on application by a medical practitioner, is satisfied—

- (a) that the person in relation to whom the application is made is suffering from mental dysfunction;
- (b) that the person has not signed a statement in accordance with section 50 and has not refused, either orally or in writing, to consent to the performance on him of psychiatric surgery;
- (c) that there are grounds for believing that the person may benefit from psychiatric surgery; and
- (d) that all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the person,

the Court may, by order, consent to the performance on the person of psychiatric surgery.

Refusal of consent

58. (1) A person who has consented under section 50 to the performance on him of psychiatric surgery or a person in respect of whom the Supreme Court has made an order under section 57 may, at any time before psychiatric surgery is performed on him, by informing the Director or any other person, either orally or in writing, refuse to consent to the performance on him of that surgery.

(2) Where a person, other than the Director, is informed that another person refuses to consent to the performance on that other person of psychiatric surgery, the first-mentioned person shall forthwith inform the Director of the refusal.

Penalty: \$1,000 or imprisonment for 6 months.

(3) Where the Director has given his approval for the performance of psychiatric surgery on a person and the Director is informed under subsection (1) or (2) by a person, other than the medical practitioner who is to perform the surgery, that the person refuses to consent to the performance on him of the surgery, the Director shall forthwith inform the medical practitioner of the refusal.

(4) Where the Director is informed under subsection (1) or (2) that a person refuses to consent to the performance on him of psychiatric surgery—

- (a) any consent given by the person under section 50, or any order made by the Supreme Court under section 57 in relation to that person, shall cease to have effect;
- (b) where an application under section 50 for the approval of the Director has been made but has not been determined before the date on which the person refuses to consent—the application shall be treated as having been withdrawn on that date; and
- (c) any approval given by the Director for the performance on that person of that surgery shall cease to have effect.

PART VIII—CONTROL OF PRIVATE MENTAL HEALTH FACILITIES

Interpretation

59. In this Part—

“holder of a licence” means the person to whom a licence is granted;

“licence” means a licence granted under this Part;

“licenced premises” means the premises at which a mental health facility is, or is proposed to be, conducted and in respect of which a licence is granted;

“mental health facility” means a hospital, nursing-home, hostel or other institution that ordinarily provides treatment and accommodation, or accommodation only, for persons suffering from mental dysfunction or from addiction to alcohol or a drug, other than—

- (a) a recognised hospital within the meaning of the *Health Insurance Act 1973* of the Commonwealth; or
- (b) any other institution conducted by the Territory.

Mental health facilities to be licensed

60. (1) A person who owns a mental health facility shall not conduct that mental health facility, other than by a manager, employee or agent employed by him, unless he is the holder of a licence.

(2) A person shall not conduct a mental health facility as the manager, employee or agent of the owner of the mental health facility unless the person is the holder of a licence.

Penalty: \$1,000.

Grant of licence

61. (1) Subject to this section, the Minister may, on application made by a person in accordance with this section, grant a licence to the person in respect of the premises specified in the licence.

(2) An application for the grant of a licence shall be made in writing and shall be lodged with the Minister together with the fee determined by the Minister under section 79 for the purposes of this subsection.

(3) The Minister shall not grant a licence under this section unless the Minister is satisfied that the applicant is a fit and proper person to hold the licence and that—

- (a) the structural and sanitary condition and the location of the premises in respect of which the licence is sought are satisfactory, having regard to the interests of the patients or residents;
- (b) the facilities provided at those premises for use in case of fire or flood are adequate;
- (c) the cooking and ablution facilities provided at those premises are adequate; and
- (d) the accommodation provided at those premises for patients or residents and for members of the staff of the facility is adequate.

(4) A licence granted under this section shall include conditions as to—

- (a) the maximum number of persons for whom accommodation and treatment, or accommodation only, may be provided at the licensed premises; and
- (b) the class or classes of patients for whom accommodation and treatment, or accommodation only, may be provided at those premises.

(5) A licence granted under this section is subject to such other conditions, if any, as the Minister thinks necessary and specifies in the licence, including but not limited to conditions as to—

- (a) the minimum number of members of the staff to be employed at the licensed premises;
- (b) the qualifications to be possessed by members of the staff;
- (c) the treatment which may be provided at the licensed premises;
- (d) the measures to be taken to ensure the health and safety of patients, or residents, and members of the staff of the facility;
- (e) the insurance to be obtained by the holder of the licence in respect of any liability of the holder arising from the operation of the licensed premises as a mental health facility;
- (f) the recreational and educational facilities to be provided at the licensed premises for patients or residents; and
- (g) the management of the licensed premises.

Term of licence

62. (1) Subject to this Part, a licence granted under section 61 remains in force for the period of 12 months commencing on the date on which the licence is granted and may be renewed in accordance with this section.

(2) The holder of a licence may, at any time before the expiration of the period of 12 months referred to in subsection (1), or the expiration of the last period of renewal, as the case may be, apply to the Minister for a renewal of the licence.

(3) An application for the renewal of a licence shall be made in writing and shall be lodged with the Minister together with the fee determined by the Minister under section 79 for the purposes of this subsection.

(4) Where, on an application for the renewal of a licence, the Minister is satisfied that the applicant is a fit and proper person to hold the licence and that—

- (a) the structural and sanitary condition and the location of the licensed premises are satisfactory, having regard to the interests of the patients or residents;
- (b) the facilities provided at those premises for use in case of fire or flood are adequate;
- (c) the cooking and ablution facilities provided at those premises are adequate; and

- (d) the accommodation provided at those premises for patients or residents and for members of the staff of the facility is adequate,

the Minister shall renew the licence for a further period of 12 months commencing on the expiration of the period of 12 months referred to in subsection (1) or of the last period of renewal, as the case requires.

Variation or revocation of conditions

63. (1) The Minister may, on application in writing made by the holder of a licence and if satisfied that it is in the interests of patients or residents at the licenced premises to which the application relates—

- (a) vary, in the manner specified in the application, a condition specified in the licence under subsection 61 (4) or (5);
- (b) revoke a condition specified in the licence under subsection 61 (5); or
- (c) make the licence subject to a condition specified in the application.

(2) Where the Minister is satisfied that, in the interests of patients or residents at licensed premises—

- (a) a condition specified in the licence under subsection 61 (4) or (5) should be varied;
- (b) a condition specified in the licence under subsection 61 (5) should be revoked; or
- (c) the licence should be made subject to a condition,

the Minister may, by notice in writing served on the holder of the licence, require the holder, within 28 days after the date of the notice, to show cause why that condition should not be varied in the manner specified in the notice or revoked or the licence should not be made subject to that condition, as the case requires.

(3) Where a notice under subsection (2) has been served on the holder of a licence, the Minister may, after the expiration of 28 days from the date of the notice—

- (a) vary, in the manner specified in the notice, the condition specified in the notice;
- (b) revoke the condition specified in the notice; or
- (c) make the licence subject to the condition specified in the notice.

(4) Where the Minister makes a decision under subsection (3), the Minister shall cause to be prepared and served on the holder of the licence a notice in writing setting out the terms of the decision, the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

(5) A decision of the Minister under subsection (3) takes effect on the date of the notice referred to in subsection (3) or on such later date as may be specified in that notice.

Surrender of licence

64. (1) The holder of a licence may at any time surrender the licence by notice in writing signed by him and lodged with the Minister together with the licence.

(2) The surrender of a licence under this section takes effect on the date of the notice or such later date as may be specified in the notice.

Cancellation of licence

65. (1) Where the Minister is satisfied that the holder of a licence has failed to comply with a condition of the licence, the Minister may, by notice in writing served on the holder of the licence, require the holder, within 28 days after the date of the notice, to show cause why the licence should not be cancelled.

(2) Where a notice under subsection (1) has been served on the holder of a licence, the Minister may, after the expiration of the period of 28 days from the date of the notice, cancel the licence.

(3) Where the Minister makes a decision cancelling a licence under subsection (2), the Minister shall cause to be prepared and served on the holder of the licence a notice in writing setting out the terms of the decision, the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

(4) The cancellation of a licence under this section takes effect on the date of the notice referred to in subsection (3) or on such later date as may be specified in that notice.

Emergency cancellation of licence

66. (1) Notwithstanding anything in section 65, where the Minister is satisfied that circumstances exist in relation to licensed premises that give rise

to an immediate risk of danger to health or safety of patients or residents at those premises, the Minister may, by notice in writing served on the holder of the licence, cancel the licence.

(2) A notice under subsection (1) shall set out the terms of the decision, the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

(3) Where a licence has been cancelled under subsection (1) the person who was the holder of the licence may apply for the restoration of the licence on the ground that by reason of a specified change in the circumstances that has occurred since the date of the cancellation, it is just that the licence should be restored.

(4) Upon an application made under subsection (3), the Minister may, if satisfied that, by reason of the change in circumstances, the licence to which the application relates should be restored, restore the licence accordingly.

Consequences of cancellation

67. Where a licence is cancelled under section 65 or 66—

- (a) the holder of the licence shall not, after the date on which the cancellation takes effect, admit a person as a patient for treatment and accommodation, or for accommodation only, at the mental health facility to which the licence relates; and
- (b) the holder of the licence shall not permit treatment to be given or accommodation to be provided at that facility to a patient after the expiration of one month after the date on which the cancellation takes effect.

Notice of appeal

68. (1) Where the Minister makes a decision—

- (a) refusing to grant or to renew a licence;
- (b) refusing to restore a licence;
- (c) refusing under subsection 63 (1) to vary or revoke a condition specified in a licence; or
- (d) refusing under subsection 63 (1) to make a licence subject to a condition,

the Minister shall cause to be prepared and served on the applicant a notice in writing setting out the terms of the decision, the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

(2) A notice under subsection (1) and subsections 63 (4), 65 (3) and 66 (1) shall contain a statement notifying the applicant, or the holder of the licence, as the case may be, of his right, subject to the *Administrative Appeals Tribunal Act 1989*, to apply to the Australian Capital Territory Administrative Appeals Tribunal for review of the decision to which the notice relates.

(3) The validity of a decision to which a notice referred to in subsection (2) relates shall not be taken to be affected by a failure to include in the notice a statement in accordance with that subsection.

Appeal

69. Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Minister—

- (a) refusing to grant or to renew a licence;
- (b) cancelling a licence;
- (c) refusing to restore a licence;
- (d) varying or revoking, or refusing under subsection 63 (1) to vary or revoke, a condition specified in a licence; or
- (e) making, or refusing under subsection 63 (1) to make, a licence subject to a condition.

Persons subject to treatment orders not to be treated at mental health facilities

70. The holder of a licence is guilty of an offence if treatment for mental dysfunction is given to a patient at the licensed premises after the holder of the licence has received notice that the patient is subject to a treatment order.

Penalty: \$1,000.

Inspectors

71. (1) The Minister may appoint such inspectors as he or she considers necessary for the purposes of this Part.

(2) A person appointed under this section shall, subject to this Part, perform such duties for the purposes of this Part as the Director directs.

(3) The Minister shall issue to each person appointed under this section a certificate certifying that the person is an inspector for the purposes of this Part.

Powers of inspector

72. (1) An inspector may, at any hour of the day, enter any licensed premises and—

- (a) inspect the premises and any equipment used at the premises for, or in connection with, the treatment or accommodation of patients;
- (b) inspect any records, books or documents that are in the possession of the occupier, or person for the time being in charge, of the premises, or to which the occupier or person has access, relating to the conduct of the mental health facility at those premises; and
- (c) require the occupier, or the person for the time being in charge, of the premises to furnish him with any information, records, books or documents that are in the possession of the occupier or person, or to which the occupier or person has access, relating to the conduct of the mental health facility at those premises.

(2) An inspector who enters upon premises in pursuance of this section is not authorized to remain on the premises if, on request by the occupier, or the person for the time being in charge, of the premises, he does not produce the certificate issued to him under subsection 71 (3).

(3) Where an inspector makes a requirement of a person under paragraph (1) (c), the inspector shall, if requested by the person, produce the certificate issued to him under subsection 71 (3) for inspection by that person and, if he fails to do so, the person is not obliged to comply with the requirement.

(4) Subject to this section, a person shall not, without reasonable excuse, obstruct or hinder an inspector in the exercise of his powers under this section or refuse or fail to comply with a requirement made of him under paragraph (1) (c).

Penalty: \$1,000 or imprisonment for 6 months, or both.

Service of notices

73. Where, under this Part, a notice is required to be served on a person, the notice may be served on the person—

- (a) by delivering the notice to the person personally;

- (b) by sending the notice to the person by post addressed to him at his last-known place of residence or business; or
- (c) by leaving the notice at the last-known place of residence or business of the person with a person apparently over the age of 16 years and apparently resident or employed at that place.

PART IX—MISCELLANEOUS

Jurisdiction

74. (1) Jurisdiction is conferred on the Magistrates Court to hear and determine an application under section 25, subsection 28 (1), section 43 or Part VI.

(2) The jurisdiction conferred on the Court by subsection (1) shall be exercised by a magistrate sitting in Chambers.

(3) Jurisdiction is conferred on the Supreme Court to hear and determine an application under subsection 28 (2), section 43 or Part VII.

(4) The jurisdiction conferred on the Supreme Court by subsection (3) shall be exercised by a Judge sitting in Chambers.

Persons entitled to be present at hearing

75. A person is not entitled to be present in a room in which an application under this Act is being heard by a court unless he is—

- (a) the Judge or the Magistrate constituting the court;
- (b) an officer or a member of the staff of the court;
- (c) a party to the application;
- (d) a person representing a party to the application or representing a person referred to in paragraph (e);
- (e) a person who is the prescribed representative of a party to the application, being a party in respect of whom a treatment order is sought or has been made;
- (f) a person who is a prescribed relative of a party to the application, being a party in respect of whom a treatment order is sought or has been made, and whose presence is requested by that party;
- (g) a person nominated by the Human Rights Commissioner of the Human Rights and Equal Opportunity Commission;

- (h) a person who is giving evidence; or
- (i) a person who is present with the leave of the court.

Next friend of minor

76. (1) A court may, if it thinks it to be in the interests of a minor to do so and if the person consents, appoint a person to be the next friend of the minor.

(2) The next friend may, on behalf of the minor, bring any application or other proceedings in a court under this Act that the minor might have brought and defend, on behalf of the minor, any proceedings brought against the minor under this Act.

(3) An order for costs may be made in favour of or against a next friend in the same circumstances as the order might have been made with respect to the minor.

(4) In this section, “proceedings” includes an appeal.

Representation of minors

77. (1) Where, in proceedings in a court under this Act—

- (a) a minor is not separately represented by another person; and
- (b) it appears to the court that the minor should be so represented,

the court may, of its own motion or on the application of any person (including the minor), order that the minor be separately represented by another person and the court may make such other order as it thinks necessary to secure that separate representation.

(2) In this section, “proceedings” includes an appeal.

Power of Minister to determine fees

79. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

Exercise of powers and performance of functions by police officers etc.

80. A police officer, a medical practitioner, the Director and each Mental Health Officer shall, in the exercise of the powers or the performance of the functions conferred under this Act in relation to any person suffering from mental dysfunction, ensure that the restrictions on the freedom of the person are minimal and that his dignity and self-respect are subject to derogation only to

the extent necessary for the proper care and protection of the person and the protection of the public.

Annual report

81. The Director shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of his operations during the year ending on that date, including details of the number of persons in respect of whom treatment orders were in effect during that year and the period of effect of each of those orders, together with details of other matters and things arising or carried out under this Act during that year.

Regulations

83. The Executive may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

NOTE

1. The *Mental Health Act 1983* as shown in this reprint comprises Act No. 52, 1983 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1
Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Mental Health Ordinance 1983</i>	52, 1983	28 Oct 1983	Ss. 1, 2, 4 and Part II (ss. 5-12): 28 Oct 1983 S. 3 (1) and Parts III-VII (ss. 13-58) and IX (ss. 74-83): 1 Mar 1985 (see <i>Gazette</i> 1985, No. S54) S. 3 (2) and (3): (a) Part VIII (ss. 59-73): 1 Jan 1987 (see <i>Gazette</i> 1986, No. S669)	
<i>Mental Health (Amendment) Ordinance 1984</i>	50, 1984	12 Sept 1984	12 Sept 1984	—
<i>Court of Petty Sessions (Civil Jurisdiction) Ordinance 1984</i>	76, 1984	19 Dec 1984	19 Dec 1984	S. 12
<i>Mental Health (Amendment) Ordinance 1985</i>	12, 1985	4 Apr 1985	4 Apr 1985	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Community and Health Service (Consequential Provisions) Ordinance 1988</i>	29, 1988	30 June 1988	2 July 1988	S. 4
<i>Nurses (Consequential Amendments) Ordinance 1988</i>	62, 1988	7 Sept 1988	5 Dec 1988 (see <i>Gazette</i> 1988, No. S369)	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

NOTE—continued
Self-Government day 11 May 1989

Table 2
Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Health Services (Consequential Provisions) Act 1990</i>	63, 1990	28 Dec 1990	Ss. 1 and 2: 28 Dec 1990 Remainder: 31 Jan 1991 (see s. 2 (2) and <i>Gazette</i> 1991, No. S4)	Ss. 6 -17
<i>Health (Consequential Provisions) Act 1993</i>	14, 1993	1 Mar 1993	1 Mar 1993 (see s. 2)	Parts IV-VI (ss. 14-34)

- (a) As at 1 March 1993 no date had been fixed for the commencement of subsections 3 (2) and (3).

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 4	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 6	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
Ss. 8-10	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 11	am. No. 29, 1988; No. 38, 1989; Act No. 63, 1990; No. 14, 1993
S. 12	am. No. 29, 1988; No. 62, 1988; Act No. 63, 1990; No. 14, 1993
S. 14	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 15	am. No. 50, 1984; No. 29, 1988; Act No. 63, 1990; No. 14, 1993
Ss. 16-20	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 21	am. No. 67, 1985; No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 22	am. No. 50, 1984
S. 22A	ad. No. 50, 1984 am. No. 67, 1985
Ss. 24, 25	am. No. 67, 1985
Ss. 28, 29	am. No. 67, 1985
S. 31	am. No. 50, 1984
S. 31A	ad. No. 50, 1984 am. No. 67, 1985
S. 34	am. No. 67, 1985
S. 36	am. Nos. 12 and 67, 1985
S. 41	am. No. 50, 1984
S. 44	am. No. 76, 1984; No. 67, 1985
S. 45	am. No. 67, 1985

NOTE—continued**Table of Amendments—continued**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 51	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 59	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
Ss. 61-66	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 68	am. No. 29, 1988; No. 38, 1989; Act No. 63, 1990; No. 14, 1993
S. 69	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 71	am. No. 29, 1988; Act No. 63, 1990; No. 14, 1993
S. 74	am. No. 67, 1985
S. 75	am. No. 29, 1988
S. 78	am. No. 29, 1988; Act No. 63, 1990 rep. No. 14, 1993
S. 82	rep. No. 38, 1989
S. 83	am. No. 38, 1989

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