



Australian Capital Territory

Mental Health (Consequential Provisions) Act 1994

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About this republication

The republished law

This is a republication of the *Mental Health (Consequential Provisions) Act 1994* effective 6 February 1995 to 21 December 2000.

Kinds of republications

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Australian Capital Territory

MENTAL HEALTH (CONSEQUENTIAL PROVISIONS) ACT 1994

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SCHEDULE



Australian Capital Territory

MENTAL HEALTH (CONSEQUENTIAL PROVISIONS) ACT 1994

An Act to repeal the *Mental Health Act 1983*, to repeal the Lunacy Act 1898 (NSW) in its application in the Territory, to amend certain other Acts, and to make certain transitional arrangements, in consequence of the enactment of the *Mental Health (Treatment and Care) Act 1994* and the *Crimes (Amendment) Act 1994*

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Mental Health (Consequential Provisions) Act 1994*.¹

Commencement

2.¹ (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on the day on which section 4 of the *Mental Health (Treatment and Care) Act 1994* commences.

Interpretation

3. In this Act—

“commencement day” means the day on which the provision in which the expression appears commences;

“new Act” means the *Mental Health (Treatment and Care) Act 1994*;

“repealed Act” means the *Mental Health Act 1983* as in force immediately before the commencement day;

“Tribunal” means the Mental Health Tribunal established by section 10 of the new Act.

PART II—MENTAL HEALTH ACT 1983

Repeal

4. The *Mental Health Act 1983* is repealed.

Director of Mental Health Services

5. The person who immediately before the commencement day held an appointment as Director of Mental Health Services under section 6 of the repealed Act shall, on and after that day, be taken to have been appointed as Director of Mental Health Services under section 112 of the new Act on the same terms and conditions that applied to the person immediately before that day.

Acting appointment

6. A person who immediately before the commencement day held an appointment to act as the Director of Mental Health Services under section 10 of the repealed Act shall, on and after that day be taken to have been appointed to act as the Director of Mental Health Services under section 117 of the new Act on the same terms and conditions that applied to the person immediately before that day.

Delegation

7. A delegation made by the Director of Mental Health Services under section 11 of the repealed Act and in force immediately before the commencement day shall, on and after that day, be taken to have been made by the Director of Mental Health Services under section 118 of the new Act.

Mental Health Officers

8. A person who immediately before the commencement day held an appointment as a Mental Health Officer under section 12 of the repealed Act shall, on and after that day, be taken to have been appointed as a Mental Health Officer under section 119 of the new Act on the same terms and conditions that applied to the person immediately before that day.

Emergency procedures

9. (1) A person who immediately before the commencement day is detained at a facility under section 21 of the repealed Act shall, on and after that day, be taken to be detained at that facility under section 38 of the new Act and anything done at that facility in accordance with subsection 21 (4) or (5) of the repealed Act in relation to that person shall be taken to have been done in accordance with the corresponding provision of the new Act.

(2) The Director of Mental Health shall, as soon as practicable after the commencement of this section, notify the Community Advocate and the Tribunal in accordance with section 42 of the new Act of each person who on the commencement day is to be taken to be detained under section 38 of the new Act by virtue of subsection (1).

(3) An application for a treatment order made under section 23 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an application to the Tribunal for a mental health order under section 14 of the new Act.

(4) An application for an order for the release of a person made under section 25 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an application to the Tribunal for the release of the person under section 46 of the new Act.

(5) A facility that immediately before the commencement day was a mental health facility conducted by the Territory for the purposes of Part IV of the repealed Act shall, on and after that day, be taken to be an approved mental health facility within the meaning of the new Act.

Treatment orders

10. (1) An application for a treatment order made under section 28 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an application to the Tribunal for a mental health order under section 14 of the new Act.

(2) A treatment order made under section 34 of the repealed Act, or varied under section 43 of that Act, and in force immediately before the commencement day shall, on and after that day, be taken to be a mental health order made by the Tribunal under section 28 of the new Act.

(3) An application to vary or discharge a treatment order made under section 43 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an application to

the Tribunal to vary or revoke a mental health order under section 36 of the new Act.

(4) An appeal from an order by the Magistrates Court under section 44 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an appeal from a decision of the Tribunal under section 141 of the new Act.

Convulsive therapy

11. (1) An application to obtain approval for the administration of convulsive therapy made under section 45 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an application to the Tribunal under section 55 of the new Act.

(2) An approval for the administration of convulsive therapy given under section 45 of the repealed Act and in force immediately before the commencement day shall, on and after that day, be taken to have been given by the Tribunal under section 55 of the new Act.

(3) Despite section 4, section 47 of the repealed Act shall continue to apply in relation to convulsive therapy administered before the commencement day.

Psychiatric surgery

12. (1) An application to obtain approval for the performance of psychiatric surgery made under section 50 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an application to the Director of Mental Health Services under section 61 of the new Act, and any act or thing done under section 51, 52, 54, 55 or 56 of the repealed Act in relation to that application shall be taken to have been done under the corresponding provision in Division 3 of Part VII of the new Act.

(2) Where, immediately before the commencement day, a committee appointed under section 51 of the repealed Act was considering an application submitted to it under that section, on and after that day, the committee shall be taken to have been appointed under section 67 of the new Act to consider the application and its members shall be taken to have been appointed on the same terms and conditions that applied to them immediately before that day.

(3) An application for an order of the Supreme Court consenting to the performance of psychiatric surgery under section 57 of the repealed Act that was pending immediately before the commencement day shall, on and after that

day, be taken to be an application to the Supreme Court under section 65 of the new Act.

(4) An order of the Supreme Court consenting to the performance of psychiatric surgery made under section 57 of the repealed Act and in force immediately before the commencement day shall, on and after day, be taken to have been made under section 65 of the new Act.

(5) An approval for the performance of psychiatric surgery given by the Director of Mental Health Services under section 53 of the repealed Act and in force immediately before the commencement day shall, on and after that day, be taken to have been given by the Director of Mental Health Services under section 64 of the new Act.

Private mental health facilities

13. (1) A licence to conduct a mental health facility granted or renewed under Part VIII of the repealed Act and in force immediately before the commencement day shall, on and after that day, be taken to be a licence to conduct a psychiatric institution issued or renewed under Division 2 of Part XII of the new Act on the day on which the licence was granted or last renewed under Part VIII of the repealed Act.

(2) An application to vary, revoke or impose a condition of a licence made under section 63 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an application to the Director of Mental Health Services under section 127 of the new Act.

(3) Despite section 4, section 64 of the repealed Act continues to apply in relation to a surrender that immediately before the commencement day had not taken effect.

(4) Any act or thing done in relation to a licence under section 65 or 66 of the repealed Act shall be taken to have been done in relation to that licence under the corresponding provision of the new Act.

(5) A notice served on a person under section 68 of the repealed Act before the commencement day shall, on and after that day, be taken to have been served on the person under section 137 of the new Act.

(6) An application for the review of a decision of the Minister under section 69 of the repealed Act that was pending immediately before the commencement day shall, on and after that day, be taken to be an application to the Administrative Appeals Tribunal under section 136 of the new Act.

(7) An appointment of an inspector under section 71 of the repealed Act that was in force immediately before the commencement day shall, on and after that day, be taken to have been made under section 132 of the new Act.

Determined fees

14. A determination made under section 79 of the repealed Act and in force immediately before the commencement day shall, on and after that day, be taken to have been made under section 146 of the new Act.

Annual report

15. The report required to be furnished under section 120 of the new Act in relation to the financial year in which that section commences shall include details of the operations of the Director of Mental Health Services under the repealed Act during that year.

PART III—CHILDREN’S SERVICES ACT 1986

16-23.² * * * * *

PART IV—COMMUNITY ADVOCATE ACT 1991

24-29.² * * * * *

PART V—AMENDMENT OF OTHER ACTS

30-35.² * * * * *

PART VI—TRANSITIONAL ARRANGEMENTS FOR FORENSIC DETAINEES

Section 20B of Commonwealth Crimes Act no longer applicable

36. For the purposes of subsection 27 (2) of the *Crimes Legislation Amendment Act (No. 2) 1989* of the Commonwealth (in this Part called the “applying Act”), on the commencement of Part XIA of the Crimes Act and Part VIII of the new Act, section 20B of the *Crimes Act 1914* of the Commonwealth as continued in force by virtue of subsection 27 (1) of the applying Act ceases to apply.

Persons in custody

37. (1) A person who immediately before the commencement day—

- (a) had been found unfit to be tried by reason of unsoundness of mind and was being kept in strict custody, or detained in safe custody, under section 20B of the *Crimes Act 1914* of the Commonwealth as continued in force by virtue of subsection 27 (1) of the applying Act; or
- (b) had been found unable to be tried by reason of insanity and was being kept in strict custody under subsection 65 (1) of the Lunacy Act 1898 (NSW) in its application in the Territory;

shall, on and after that day, be taken to be a person in respect of whom the Mental Health Tribunal has determined under section 68 of the new Act is unfit to plead to a charge but is likely to become fit within 12 months after the determination, and that determination shall be taken to have come into effect on the day on which the person was ordered to be kept in strict custody.

(2) A person who immediately before the commencement day—

- (a) had been acquitted by reason of unsoundness of mind and was being kept in strict custody, or detained in safe custody, under section 20B of the *Crimes Act 1914* of the Commonwealth as continued in force by virtue of subsection 27 (1) of the applying Act; or
- (b) had been found insane at the time of committing an offence and was being kept in strict custody, or detained in safe custody, under subsection 65 (3) of the Lunacy Act 1898 (NSW) in its application in the Territory;

shall, on and after that day, be taken to have been detained pursuant to an order of the Supreme Court under Part XIA of the *Crimes Act 1900* as amended by the *Crimes (Amendment) Act 1994* requiring the person to be detained in custody until the Tribunal orders otherwise, and that order shall be taken to have come into effect on the day on which the person was ordered to be kept in strict custody.

(3) If, immediately before the commencement day, a person to whom subsection (2) applies had been in custody (whether strict custody, safe custody or a combination of both) for 6 months or longer, the Tribunal shall, as soon as practicable after the commencement day, review the order for detention under section 72.

Persons released on conditions

38. Where—

- (a) before the commencement day, a person had been released from custody subject to conditions under—
 - (i) subsection 20B (4) of the *Crimes Act 1914* of the Commonwealth as continued in force by virtue of subsection 27 (1) of the applying Act; or
 - (ii) section 10A of the *Removal of Prisoners (Territories) Act 1923* of the Commonwealth as applied by section 7 of the *Removal of Prisoners Act 1968*;
- (b) immediately before that day, those conditions were still in force in respect of that person;

on and after that day, the person’s release shall be taken to have been ordered by the Tribunal under subsection 72 (2) of the new Act and the conditions to have been imposed by the Tribunal under subsection 72 (4) of that Act.

SCHEDULE²

Section 35

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NOTES

- 1. Act No. 45, 1994; notified in the ACT Gazette on 7 September 1994; ss. 1 and 2 commenced on 7 September 1994; remainder (ss. 3-38) commenced on 6 February 1995 (see s. 2 (2) and *Gazette* 1995, No. S33, p. 2).
- 2. Parts III (ss. 16-23), IV (ss. 24-29) and V (ss. 30-35) and the Schedule contain amendments to other Acts which are published separately.

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