



AUSTRALIAN CAPITAL TERRITORY

Mental Health (Treatment and Care) (Amendment) Act 1999

No. 31 of 1999

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AUSTRALIAN CAPITAL TERRITORY

Mental Health (Treatment and Care) (Amendment) Act 1999

No. 31 of 1999

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

[Notified in ACT Gazette S34: 25 June 1999]

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

1. Short title

This Act may be cited as the *Mental Health (Treatment and Care) (Amendment) Act 1999*.

2. Commencement

(1) Sections 1 to 5 (inclusive) commence on the day this Act is notified in the *Gazette*.

(2) The remaining provisions commence on 1 October 1999.

3. Principal Act

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

4. Long title

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

5. Repeal

Section 3 of the Principal Act is repealed.

6. Interpretation

Section 4 of the Principal Act is amended—

- (a) by omitting “section 29” from the definition of “mental health order” and substituting “section 26 or 27”;
- (b) by omitting the definitions of “Council”, “Director” and “psychiatric illness”; and
- (c) by inserting the following definitions:

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

‘chief psychiatrist’ means the Chief Psychiatrist appointed under section 112;

‘community care facility’ means—

(a) a facility, or part of a facility, for the care, protection, rehabilitation or accommodation of mentally dysfunctional persons; or

(b) a prescribed psychiatric institution or a prescribed part of a psychiatric institution;

but does not include a facility the principal purpose of which is for the detention of persons sentenced to imprisonment;

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

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

(a) delusions;

(b) hallucinations;

(c) serious disorder of thought form;

(d) a severe disturbance of mood;

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

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

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

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

7. Objectives of Territory

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

- “(e) to consult with persons who are receiving or have received such services, their carers and the community about—
- (i) the provision of services and facilities for mentally dysfunctional or mentally ill persons and to establish formal and informal consultative mechanisms for this purpose;
 - (ii) the development of mental health policy;
 - (iii) planning for mental health services;
 - (iv) the delivery of services and facilities; and
 - (v) the evaluation and review of policies and services;”.

8. Applications by other persons

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

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

9. Insertion

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

“16A. Determination of ability to consent

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

10. Assessments to be conducted as soon as practicable

Section 17 of the Principal Act is amended—

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

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

11. Insertion

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

“24A. Consultation

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

- (a) the person most likely to be responsible for providing the treatment, programs and other services proposed to be ordered;
- (b) if the person who is to be the subject of the order is a child—the child’s parents and Director of Family Services;
- (c) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and

- (d) if the person has an attorney appointed under the *Powers of Attorney Act 1956* and the Tribunal considers it appropriate to do so—the attorney.

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

12. Matters to be taken into account

Section 25 of the Principal Act is amended—

- (a) by inserting before paragraph (a) the following paragraph:
 - “(aa) whether the person consents, refuses to consent or is capable of making a decision to consent, to a proposed course of treatment, care or support;”;
- (b) by omitting from paragraph (d) “103” and substituting “24A”; and
- (c) by inserting after paragraph (q) the following paragraph:
 - “(qa) the religious, cultural and language needs of the person;”.

13. Substitution

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

“26. Types of orders

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

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

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

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

“27. **Restriction order**

“(1) The Tribunal may, in addition to making an order under section 26, make a restriction order in respect of a person if satisfied that, in the interests of his or her health or safety or public safety, the person should not be discharged from the order under section 26 unless the Tribunal has reviewed that order.

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

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

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

“(1) The chief psychiatrist, or his or her delegate, is responsible for the treatment and care of a person to whom an order under subsection 26 (1) applies.

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

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

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

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

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

“(6) If the Tribunal makes a restriction order, it shall give a copy of the order to the chief psychiatrist or care coordinator, as the case requires.

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

“(8) If—

- (a) an order is in force under subsection 26 (1) or (2) and section 27; and
- (b) the chief psychiatrist or care coordinator (as the case requires) is satisfied that the person to whom the order relates—
 - (i) is no longer a person in respect of whom the Tribunal could make an order under subsection 26 (1) or (2); and
 - (ii) should be discharged from the order;

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

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

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

“29. Role etc of chief psychiatrist and care coordinator

“(1) The chief psychiatrist or care coordinator (as the case requires) is responsible for determining—

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

“(2) Before determining a matter referred to in paragraph (1) (a), (b), (c) or (d), the chief psychiatrist or care coordinator (as the case requires) shall—

- (a) consult with the Tribunal and the community advocate; and
- (b) whenever practicable, consult with the person the subject of the order.

“(3) A determination shall be in writing.

“(4) For the purposes of paragraph (1) (b), the chief psychiatrist or care coordinator (as the case requires) shall not determine treatment that has, or is likely to have, the effect of subjecting the person to whom it is administered to undue stress or deprivation, having regard to the benefit likely to result from the administration of the treatment.

“(5) The chief psychiatrist or care coordinator (as the case requires) shall discharge a person in respect of whom an order under section 26 applies, if satisfied that the person is no longer a person in respect of whom the Tribunal could make an order under subsection 26 (1) or (2), unless the person is subject to a restriction order.

“(6) If the chief psychiatrist or care coordinator (as the case requires) discharges a person in accordance with subsection (5), he or she shall, within 72 hours of discharging the person, notify the Tribunal in writing.

“(7) If a person is subject to an order under subsection 26 (1) or (2) and a restriction order, the chief psychiatrist or care coordinator (as the case requires) shall not discharge the person from the order under subsection 26 (1) or (2) unless—

- (a) he or she has notified the Tribunal of his or her intention to discharge the person; and
- (b) the Tribunal—
 - (i) has reviewed the restriction order and is satisfied that it is no longer required; or
 - (ii) is satisfied that an assessment for another order should be made.”.

14. Duration of orders

Section 30 of the Principal Act is amended by omitting subsections (2) and (3).

15. Power under custodial orders

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

“(2) The chief psychiatrist or care coordinator (as the case requires) shall not subject a person to involuntary seclusion unless satisfied that it is the only means in the circumstances to prevent the person from causing harm to himself or herself or to another person.

“(3) If the chief psychiatrist or care coordinator (as the case requires) subjects a person to involuntary seclusion, he or she shall—

- (a) enter the fact and the reasons for the involuntary seclusion in the patient’s record;
- (b) inform the community advocate in writing within 24 hours after the person is subjected to involuntary seclusion; and
- (c) keep a register of such seclusion in a form approved by the Minister.

“(4) If, under paragraph 29 (1) (c), the chief psychiatrist or care coordinator (as the case requires) determines a place at which a person shall reside, that is different from the place determined by him or her at the time the order was made, he or she shall notify the Tribunal and the community advocate.”.

16. Insertion

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

“32A. Contravention of mental health orders

“(1) If a mental health order is in force in respect of a person, and the person refuses to comply with the order, the chief psychiatrist or care coordinator (as the case requires) is—

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

“(2) If the chief psychiatrist or care coordinator (as the case requires) authorises the detention of a person under subsection (1), he or she shall notify the Tribunal and the community advocate of—

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

“(3) If the chief psychiatrist or care coordinator (as the case requires) authorises the detention of a person under paragraph (1) (c), a police officer, mental health officer or doctor may apprehend the person and take him or her to an approved mental health facility.

“(4) For subsection (3), a police officer, mental health officer or doctor—

- (a) may use such force and assistance as is necessary and reasonable to apprehend the person and take him or her to the facility; and
- (b) if there are reasonable grounds for believing that the person is at certain premises, may enter those premises using such force and with such assistance as is necessary and reasonable.”.

17. Review, variation and revocation

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

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

- (a) notice of intention of the chief psychiatrist or care coordinator (as the case requires) to discharge the person from a psychiatric treatment order or a community care order; or
- (b) notice of contravention of the restriction order;

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

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

- (a) if satisfied that the person is no longer a person in respect of whom the Tribunal could make an order under section 26—shall revoke the restriction order; or
- (b) if not satisfied that the person is not a person in respect of whom the Tribunal could make a mental health order—may make an order for an assessment under section 16.”.

18. Apprehension

Section 37 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) If a police officer has reasonable grounds for believing that a person is mentally dysfunctional or mentally ill and has attempted or is likely to attempt—

- (a) to commit suicide; or
- (b) to inflict serious harm on himself or herself or another person;

the police officer may apprehend the person and take him or her to an approved health facility.”;

- (b) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) the person is mentally dysfunctional or mentally ill and—

- (i) as a consequence, requires immediate treatment or care; or

- (ii) in the opinion of the doctor or mental health officer, the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment or care;";
- (c) by inserting in paragraph (2) (c) “, social or financial wellbeing,” after “safety”; and
- (d) by inserting after subsection (2) the following subsection:

“(2A) The Tribunal shall, on application, review the decision of a doctor or mental health officer under subparagraph (2) (a) (ii) within 2 working days of the date of receipt of the application.”.

19. Detention

Section 38 of the Principal Act is amended by inserting “, or paragraph 428DA (1) (a) of the Crimes Act” after “section 37”.

20. Insertion

After section 38 of the Principal Act the following section is inserted:

“38A. Circumstances in which copy of court order to be provided

A police officer, or an escort under the *Custodial Escorts Act 1998*, who conveys an accused person to an approved health facility for examination by a medical practitioner under paragraph 428DA (1) (a) of the Crimes Act shall give a copy of the court order to the person in charge of the facility.”.

21. Examination by doctor

Section 40 of the Principal Act is amended by inserting “, or paragraph 428DA (1) (a) of the Crimes Act” after “section 37”.

22. Authorisation of involuntary detention

Section 41 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:
 - “(a) the person is mentally dysfunctional or mentally ill and—
 - (i) as a consequence, requires immediate treatment or care; or

- (ii) in the opinion of the doctor or mental health officer, the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment or care;";
- (b) by inserting in paragraph (1) (c) “, social or financial wellbeing,” after “safety”;
- (c) by inserting in paragraph (2) (b) “by a psychiatrist” after “made”;
- and
- (d) by adding at the end the following subsections:
 - “(3) The Tribunal shall, on application, review the decision of a doctor or mental health officer under subparagraph (1) (a) (ii) within 2 working days of the date of receipt of the application.
 - “(4) An application for further detention shall be in a form approved by the Minister.
 - “(5) On receipt of an application under paragraph (2) (b), the Tribunal shall review an order under subsection (2) within 2 working days after the date of the application.”.

23. Insertion

After section 41 of the Principal Act the following section is inserted:

“41A. Notification of Magistrates Court about emergency detention or release from emergency detention

The person in charge of an approved health facility—

- (a) shall notify the Magistrates Court of the results of an examination conducted by a doctor pursuant to an order under subsection 428DA (1) of the Crimes Act; and
- (b) if, after examination by the doctor—
 - (i) the person is to be detained for treatment or care—shall ensure that the person is detained for the purposes of receiving that treatment or care; or
 - (ii) the person is not to be detained for treatment or care, or is to be released after being detained—shall release the person into the custody of a police officer.

24. Notification of certain persons about detention

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

“(2) The person in charge of a facility in which a person is detained under section 41 shall, if the accused person has been taken to the facility in accordance with an order under paragraph 428DA (1) (a) of the Crimes Act, in addition to complying with subsection (1) of this section, notify the court of the reasons for the involuntary detention and care.

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

25. Psychiatric examination

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

26. Treatment during detention

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

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

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

27. Orders for release

Section 46 of the Principal Act is amended—

(a) by inserting “then, subject to subsection (2)” after “justified”; and

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

“(2) If the person detained under subsection 41 (1) or (2) is an accused person to whom an order under subsection 428DA (1) of the Crimes Act applies—

(a) the doctor who examined the person under section 43;

(b) the chief psychiatrist; or

(c) the Tribunal;
shall notify the person in charge of an approved mental health facility if satisfied that the detention of the person is no longer justified.”.

28. Duty to release

Section 47 of the Principal Act is amended by adding at the end the following subsection:

“(2) If the person in charge of an approved mental health facility is notified under subsection 46 (2), he or she shall, as soon as practicable, discharge the person to whom the notification relates into the custody of a police officer.”.

29. Approved facilities

Section 48 of the Principal Act is amended—

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

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

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

30. Heading—Part 6

The heading to Part 6 of the Principal Act is amended by inserting “**OR MENTALLY ILL**” after “**DYSFUNCTIONAL**”.

31. Restriction on use

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

“that the administration of the therapy is likely to result in substantial benefit to the person and—

- (i) all other reasonable forms of treatment that may be available have been tried but have not proved successful; or
- (ii) it is the most appropriate form of treatment reasonably available.”.

32. Determination of fitness to plead

Section 68 of the Principal Act is amended—

- (a) by inserting in the definition of “order to determine fitness” in subsection (1) “or the Magistrates Court” after “Supreme Court”; and
- (b) by omitting subsection (3) and substituting the following subsections:

“(3) The Tribunal shall make a determination that a person is unfit to plead to a charge if satisfied that the person’s mental processes are disordered or impaired to the extent that the person is unable—

- (a) to understand the nature of the charge;
- (b) to enter a plea to the charge and to exercise the right to challenge jurors or the jury;
- (c) to understand that the proceedings are an inquiry as to whether the person committed the offence;
- (d) to follow the course of the proceedings;
- (e) to understand the substantial effect of any evidence that may be given in support of the prosecution; or
- (f) to give instructions to his or her legal representative.

“(3A) A person is not unfit to plead only because he or she is suffering from memory loss.”.

33. Periodic review of orders for detention

Section 72 of the Principal Act is amended—

- (a) by omitting paragraph (a) of the definition of “order for detention” in subsection (1);
- (b) by omitting from paragraph (b) of the definition of “order for detention” in subsection (1) “the Supreme Court” and substituting “a court”; and

- (c) by omitting paragraph (3) (c) and substituting the following paragraph:

“(c) the best estimate of the sentence of imprisonment nominated by the relevant court under Part 11A of the Crimes Act as the sentence it would have imposed had the person been found guilty of the relevant offence.”.

34. Limit on detention

Section 75 of the Principal Act is amended—

- (a) by omitting all the words after “than” and substituting “the limiting period”; and
- (b) by adding at the end the following subsection:

“(2) In subsection (1)—

‘limiting period’, in relation to a person, means a period that is equivalent to the period—

- (a) commencing on the day on which an order of the relevant court under Part 11A of the Crimes Act is made requiring the person to be detained in custody until the Tribunal orders otherwise; and
- (b) ending on the day on which, if the person had been sentenced to a term of imprisonment for a period equivalent to the term nominated under section 428C, 428CA, 428CC or 428CD (as the case may be) of that Act, that sentence would have expired.”.

35. Membership

Section 76 of the Principal Act is amended—

- (a) by omitting from paragraph (c) “and”;
- (b) by adding at the end of paragraph (d) “and”;
- (c) by inserting after paragraph (d) the following paragraph:

“(e) a panel of not more than 9 members, who are not psychiatrists or psychologists, but who, in the opinion of the Minister, have skills and experience in providing mental health clinical services (including mental health nurses, an occupational therapists or social workers).”; and

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

“(2) A person shall not be appointed a member of the Tribunal if he or she has, within the period of 12 months preceding the date of appointment, been the subject of a mental health order or proceeding under this Act.

“(3) The Minister shall end the appointment of a member if he or she is the subject of an order under section 26.”.

36. Constitution for performance of certain functions

Section 77 of the Principal Act is amended—

- (a) by omitting paragraph (2) (k) and substituting the following paragraph:

“(k) a person chosen by the President from the panel referred to in paragraph 76 (b), (c) or (e) according to whether the President considers the person to be most suitable to deal with the matter; and”; and

- (b) by omitting subsection (3) and substituting the following subsection:

“(3) Despite subsections (1) and (2), a Magistrate who makes—

- (a) an order requiring a person to submit to the jurisdiction of the Tribunal;
- (b) a finding under Part 6 of the *Magistrates Court Act 1930* in respect of a person; or
- (c) a determination in relation to bail for a person;

shall not constitute or be a member of the Tribunal for a purpose referred to in subsection (1) or (2) if the proceeding before the Tribunal is in relation to that order, or arising from a charge in respect of which that finding or determination was made.”.

37. Repeal

Section 103 of the Principal Act is repealed.

38. Heading—Part 10

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

39. Chief Psychiatrist

Section 112 of the Principal Act is amended—

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

40. Functions

Section 113 of the Principal Act is amended—

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

41. Mental Health Officers

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

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

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

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

42. Substitution

Part 11 of the Principal Act is repealed and the following Part substituted:

“PART 11—OFFICIAL VISITORS

“121. Appointment etc

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

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

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

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

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

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

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

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

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

“(1) An official visitor—

- (a) shall visit and inspect mental health facilities;
- (b) shall inquire into—
 - (i) the adequacy of services for the assessment and treatment of persons with mental dysfunction or a mental illness;
 - (ii) the appropriateness and standard of facilities for the recreation, occupation, education, training and rehabilitation of persons receiving treatment or care for mental dysfunction or a mental illness;

- (iii) the extent to which people receiving treatment or care for mental dysfunction or a mental illness are being provided the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care;
 - (iv) any contravention of this Act;
 - (v) any other matter that an official visitor considers appropriate having regard to the objectives in sections 7 and 8; and
 - (vi) any complaint made to an official visitor by a person receiving treatment or care for mental dysfunction or a mental illness; and
- (c) has such other functions as are conferred on the official visitor by this or another Act.

“(2) An official visitor—

- (a) may, with or without prior notice given to a responsible person for a mental health facility (within the meaning of Part 6), visit the mental health facility at such times and for such periods as the visitor thinks fit; and
- (b) shall visit a mental health facility at least once every 3 months.

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

“122A. Official visitor—powers etc

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

- (a) inspect any part of the facility;
- (b) see any person who is receiving treatment or care for mental dysfunction or a mental illness unless the person has asked not to be seen;
- (c) make inquiries relating to the admission, detention, care, treatment and control of persons receiving treatment or care for mental dysfunction or a mental illness; and
- (d) inspect—
 - (i) any document or medical record relating to any person receiving treatment or care for mental dysfunction or a mental illness if he or she has the consent in writing of the person receiving the treatment or care; and

(ii) any records required to be kept under this Act.

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

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

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

Penalty:

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

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

Penalty:

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

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

Penalty: 5 penalty units.

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

“122B. Reports by official visitors

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

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

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

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

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

“(6) A person may at any reasonable time inspect a copy of a report under this section.

“(7) A person may, on payment of the reasonable copying costs, obtain a copy of a report under this section.”.

43. Interpretation

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

44. Insertion

After section 146 of the Principal Act the following section is inserted:

“146A. Review of Act

The Minister shall—

- (a) review the operation of this Act as soon as possible after the end of the period of 5 years commencing on the date of commencement of this section; and
- (b) table in the Legislative Assembly a report on the outcome of the review within 6 months after the end of that period of 5 years.”.

45. Insertion

After section 147 of the Principal Act the following Part is inserted:

“PART 14—SAVINGS AND TRANSITIONAL PROVISIONS

“148. Savings and transitional provisions

“(1) In subsection (2)—

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

“(2) The person who, immediately before the commencement of this Act, held office as the Director of Mental Health Services under the Principal Act holds office as the chief psychiatrist under and subject to the amended Act, for the unexpired period of the person’s appointment to that office of Director, as if the person had been appointed as chief psychiatrist under section 112 of the amended Act for that period.

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

“(4) This section expires 2 years after it commences.”.

46. Further amendments of Principal Act

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

47. Consequential amendments of other Acts

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

SCHEDULE 1

Section 46

CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT

Section 4 (definition of “psychiatric institution”)—

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

Paragraph 13 (1) (b)—

Omit “or to be likely to be, because of mental dysfunction, a danger to the community”, substitute “, because of mental dysfunction or mental illness, likely to do serious harm to others”.

Paragraph 14 (1) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) is or is likely, because of mental dysfunction or mental illness, to do serious harm to others.”.

Paragraph 14 (3) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) the risk of serious harm to others;”.

Subparagraph 15 (1) (a) (ii)—

Omit all the words after “offender”, substitute “is or is likely to do serious harm to others”.

Paragraph 15 (3) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) the risk of serious harm to others;”.

Subparagraph 16 (1) (a) (ii)—

Omit all the words after “person”, substitute “is or is likely to do serious harm to others”.

Section 24—

Omit “29”, substitute “26”.

SCHEDULE 1—continued

Subparagraph 25 (1) (t) (ii)—

Omit all the words after “person”, substitute “is or is likely to do serious harm to others”.

Section 32—

- (a) Omit “paragraph 27 (2) (a)”, substitute “subsection 26 (1)”.
- (b) Omit “custodian” (wherever occurring), substitute “chief psychiatrist or care coordinator (as the case requires)”.

Paragraph 33 (1) (a)—

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

Paragraph 33 (1) (c)—

Omit “custodian”, substitute “chief psychiatrist or care coordinator (as the case requires)”.

Subsection 33 (1)—

Omit “custodian” (second occurring), substitute “chief psychiatrist or care coordinator (as the case requires)”.

Subsection 33 (2)—

Omit “custodian”, substitute “chief psychiatrist or care coordinator (as the case requires)”.

Section 34—

Omit “a custodian”, substitute “the chief psychiatrist or care coordinator (as the case requires)”.

Section 35—

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

Subparagraph 36 (2) (b) (ii)—

Omit the subparagraph, substitute the following subparagraph:

“(ii) the person is not likely to do serious harm to others;”.

SCHEDULE 1—continued

Section 48B (definition of “custodial order”)—

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

Subsections 55 (2) and (3)—

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

Paragraph 55 (5) (b)—

Omit “psychiatric”, substitute “mental”.

Paragraph 65 (a)—

Omit “psychiatric”, substitute “mental”.

Subparagraph 72 (3) (b) (ii)—

Omit the subparagraph, substitute the following subparagraph:

“(ii) the person would be likely to do serious harm to others;”.

Paragraphs 89 (1) (g) and (ga)—

Omit “psychiatric”, substitute “mental”.

Paragraph 90 (2) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) the risk of serious harm to others.”.

Paragraphs 94 (h) and (ha)—

Omit “psychiatric”, substitute “mental”.

Subsection 99 (2)—

Omit the subsection.

Paragraph 120 (a)—

Omit “psychiatric”, substitute “mental”.

Subsection 130 (1)—

Omit “danger”, substitute “harm”.

SCHEDULE 1—continued

Section 138—

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

Further amendments—

1. The following provisions are amended by omitting “Director” (wherever occurring) and substituting “chief psychiatrist”:

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

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

Section 4 (definitions of “mental health facility”, “mental health professional” and “mentally dysfunctional offender”), sections 7, 8 and 9, paragraphs 11 (a), 16 (1) (a) and 25 (r), (s) and (t), subsection 30 (1), paragraphs 32 (a) and (b), subparagraphs 33 (1) (a) (i) and (ii), paragraphs 35 (a) and (b) and 36 (2) (a), subsections 52 (3) and (4), subparagraphs 70 (1) (b) (i) and (ii) and paragraphs 70 (3) (a) and (b) and 76 (d).

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

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

SCHEDULE 2

Section 47

AMENDMENTS OF OTHER ACTS

Children's Services Act 1986

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

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

Coroners Act 1997

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

Omit "Director of Mental Health", substitute, "chief psychiatrist".

NOTES

Principal Act

1. Reprinted as at 1 June 1998. See also Act Nos. 54 and 70, 1998; No. 22, 1999.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Section headings

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

Section	Alteration
13 and 70	Insert " or mentally ill " after " dysfunctional ".
35, 63, 64 and 120	Omit from the heading " Director " and substitute " chief psychiatrist ".

[Presentation speech made in Assembly on 22 April 1999]