

1999

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**Mental Health (Treatment and Care)
(Amendment) Bill (No.2) 1999**

EXPLANATORY MEMORADUM

Authorised by
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SUMMARY OF BILL

The Bill amends the *Mental Health (Treatment and Care) Act 1994* ("the Principal Act").

On 22 June 1999, the Legislative Assembly passed the *Mental Health (Treatment and Care) (Amendment) Act 1999*. That Act made a number of amendments to the Principal Act based on recommendations taken from a wide-ranging community consultation process.

The amendments passed by the Assembly in June 1999 commenced operation on 1 October 1999.

Further consideration of the amendments passed in June 1999 has identified a number of inconsistencies and anomalies which need to be rectified if the June amendments are to operate as intended by the Assembly.

These amendments will:

- (i) enable the Care Coordinator to delegate his or her powers under the Act in the same way that the Chief Psychiatrist can do so;
- (ii) remove the redundant reference to the Care Coordinator in a number of provisions in Section 32;
- (iii) remove a reference to mental health officers in Section 41 of the Act (as this is an error);
- (iv) amend the reference to psychiatric and physical examinations for persons subject to emergency detention to reflect best practice in this area; and
- (v) remove any confusion in relation to referrals to the Mental Health Tribunal in Section 15.

DETAIL OF BILL

Clause 1 – Name of Act

This clause provides information in relation to the name of the Act. The Act will be known as the *Mental Health (Treatment and Care) Amendment Act (No.2) 1999* (“the Act”).

Clause 2 - Commencement

This clause details the commencement provisions of the Bill. The entire Bill will commence on the day in which the Bill is notified in the *Gazette*.

Clause 3 – Act amended

This clause provides details of the principal Act which the Act seeks to amend. The principal Act is the *Mental Health (Treatment and Care) Act 1994* (“the Act”)

Clause 4 – Interpretation (definition of care coordinator)

This Clause amends Section 4 of the Act by replacing the current definition for the “care coordinator” and replaces it with a new definition:

“Care coordinator – See section 36A

This change will refer the reader to the new Section 36A which details who can be a care coordinator, how the care coordinator is appointed and enables the Care Coordinator to delegate his or her powers under the Act. (see Clause 8 for a detailed reason for the amendment)

Clause 5 – Referrals (for assessments)

This clause amends Section 15 by adding the word “and” at the end of paragraph (1)(a). This rectifies an omission in the amendments passed by the Legislative Assembly in June 1999. Section 15 enables a referring officer under the Act to refer an alleged offender to the Mental Health Tribunal for a mental health order where there are reasonable grounds for believing that:

- (a) the person’s, or others’ safety is at risk due to the person’s mental dysfunction or mental illness;
- (b) it is not appropriate to continue the prosecution of the person due to nature and circumstances of the offence and the person’s apparent mental condition.

There is currently no conjunction between paragraphs (a) and (b) (That is, there should be an “and” or and “or” between the two paragraphs). As it currently reads, it is not clear if the criteria in both paragraphs must be satisfied or whether only one criterion must be satisfied before a referring officer can refer a person to the Tribunal.

By adding the word “and” at the end of paragraph (a), it will clarify that both criteria must be satisfied before a referring officer can refer an alleged offender to the Mental Health Tribunal for consideration for a mental health order.

Clause 6 – Mental Health Orders – General (delegation of Care Coordinator’s powers)

This clause amends Section 28 of the Act by removing subsection (3) and replacing it with a new provision which will enable the Care Coordinator to delegate his or her powers under the Act.

The Act provides for, *inter alia*, the imposition of two separate mental health orders - one for persons with a mental illness (psychiatric treatment orders) and one for persons with a mental dysfunction (community care orders). To complement this, the Act creates the positions of the Chief Psychiatrist, to be responsible for persons under psychiatric treatment orders, and the Care Coordinator, to be responsible for persons under community care orders.

Persons under mental health orders may need a variety of interventions from a range of health professionals. The Chief Psychiatrist or Care Coordinator would not have the time and the necessary breadth of skills to be able to be directly responsible for the day to day management of every mental health order. The Act (at subsection 28(1)) specifically states that the Chief Psychiatrist is able to delegate his or her powers in relation to the implementation and execution of a mental health order. However, the Act does not have a similar provision for the Care Coordinator.

This situation places an added responsibility on the Care Coordinator. In addition, the wide range of services that may be required by a person under a community care order will require professional interventions which the Care Coordinator cannot provide. In such circumstances, it would be inappropriate for the Care Coordinator to be totally responsible for the provision of such services.

This Clause will amend the Act to enable the Care Coordinator to delegate his or her powers.

Clause 7 – Power under custodial orders

This Clause amends Section 32 of the Act by removing the reference to the care coordinator in subsections (1), (2) and (3).

While section 32 refers only to persons under psychiatric treatment orders (and therefore the responsibility of the Chief Psychiatrist) there is a reference to both the Chief Psychiatrist and the Care Coordinator in the first three subsections. The reference to the Care Coordinator is redundant.

The inclusion of the care coordinator does not affect the operation of the Act. However, it is appropriate to use the opportunity of the other amendments to the Act to rectify this anomaly.

Clause 8 – insertion (New Division 4 – Care Coordinator)

This clause adds a new Section 36A and 36B.

Section 36A will enable the appointment of a care coordinator by the Minister by instrument. This Section also provides that the care coordinator will either by a public servant specified in the instrument or the person, from time to time, holding, occupying or performing the duties of an office or position specified in the instrument.

The proposed Section 36B provides the care coordinator with the power delegate, by instrument, any or all of his or her powers or functions. This Section enables the delegation to be expressed generally, in relation to a particular community care order or otherwise subject to conditions.

Clause 9 – Authorisation of involuntary detention

This clause amends Section 41 of the Act by removing the reference to mental health officers from subparagraph 41(1)(a)(ii).

As the Act currently stands, a doctor may be required to detain a person on the advice of a mental health officer, even where the doctor is of the opinion that such a detention is unwarranted on health and safety grounds. This was not the intention of the amendments to the Act.

Subsection 37(2) of the Act provides the criteria for the apprehension of persons for emergency detention purposes. These criteria are the same for doctors or mental health officers. Unfortunately, these provisions were replicated at Section 41 even though that Section refers only to the authorisation of involuntary detention, which is a matter for a medical practitioner to determine.

The Bill amends Section 41 by removing the reference to mental health officers.

Clause 10 - Medical Examination

Section 43 of the Act exists to ensure that any person held under emergency detention provisions receives a physical and psychiatric examination within 24 hours of being detained. Under the current reading of the Act, a psychiatrist must conduct both the physical and psychiatric examination.

This clause amends Section 43 of the Act by re-arranging Section 43 to provide that both a physical and psychiatric examination is completed within 24 hours for every person detained under emergency detention provisions, without providing that a psychiatrist must perform both examinations.

In practice, a medical officer or registrar performs the physical examination leaving the specialist psychiatric consultant to attend to his or her core responsibilities for the psychiatric examination. This process is considered best practice as well as being the best use of available resources.