

1994

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

MENTAL HEALTH (TREATMENT AND CARE) BILL 1994

**SUPPLEMENTARY
EXPLANATORY MEMORANDUM**

**Amendments to be moved
on behalf of the Government**

**Circulated by Authority of the Attorney General
and Minister for Health**

Terry Connolly MLA

MENTAL HEALTH (TREATMENT AND CARE) BILL 1994

These amendments deal with technical aspects of the legislation and clarify certain provisions.

Amendment 1

This amendment substitutes a new paragraph 27(1)(c). This additional provision is designed to clarify the law relating to lack of consent in relation to mental health orders. The Bill already provides that lack of consent means refusal to consent. The addition is to cover persons who are incapable of weighing up for themselves the considerations involved in making a decision about consent.

Amendment 2

This amendment to subclause 93(2) to remove the reference to the functions of the Tribunal in paragraph 11(h) of the Bill. Subclause 93(2) limits the general power of the President of the Tribunal in subclause 93(1) to give directions to the Registrar in relation to the conduct of proceedings. Paragraphs 11(e), (f) and (g) provide for the Tribunal's functions in relation to criminal proceedings. Paragraph 11(h) is a general "catch - all" providing that the Tribunal has such other functions as may be conferred by another Act. The reference to paragraph 11(h) is omitted from subclause 93(2) and decisions as to whether it is appropriate to exclude other functions of the Tribunal from the operation of subclause 93(1) will be made as and when those functions are actually conferred by another Act.

Amendments 3 and 4

These two amendments to subclause 103(1) will require the Tribunal to undertake additional consultation where appropriate before making a mental health order. Subclause 103(1) currently only requires the Tribunal to consult with the mental health professionals most likely to be responsible for giving effect to the mental health order and, where the person subject to the order is a child, the Director of Family Services. Amendment 3 simply

omits the word "and" from paragraph 103(1)(a) because of insertion of additional paragraphs (c) and (d) by amendment 4. New paragraphs 103(1)(c) and (d) requires the Tribunal to consult the guardian or attorney where there is such a guardian or attorney appointed. The Tribunal is only required to consult the person's attorney where the Tribunal considers that it is appropriate to do so.

Amendment 5

This amendment inserts an additional subclause (5) at the end of subclause 141(4). New subclause (5) applies provisions of the *Magistrates Court Act 1930* in relation to appeals to the Supreme Court as if they were appeals under that Act. The effect of this is to clarify the question of whether fresh evidence can be received on an appeal from the Tribunal to the Supreme Court. Under the applied provisions of the *Magistrates Court Act 1930* the Supreme Court has a discretion to receive further evidence.

Amendment 6

This amendment inserts new clause 143A. This clause limits the circumstances in which the Supplemental Agreement with New South Wales in the Schedule to the *Mental Health Act 1962* can be used for the involuntary admission of patients to psychiatric institutions in New South Wales. The effect of clause 143A is that the Tribunal must consent before a medical practitioner may give a certificate in respect of a person so that they may be involuntarily admitted to a psychiatric institution. The Tribunal will go through the same process in giving any such consent as it would in giving a mental health order.