

2002

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

MENTAL HEALTH (TREATMENT AND CARE) AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

Circulated by authority of
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MENTAL HEALTH (TREATMENT AND CARE) AMENDMENT BILL 2002

BACKGROUND

The *Mental Health (Treatment and Care) Act 1994* (the Act) provides for the Mental Health Tribunal to make orders about the treatment, care, control, rehabilitation and protection of mentally dysfunctional or mentally ill persons. It also provides that appeals may be made to the Supreme Court from a decision of the Mental Health Tribunal.

In some cases, though, treatment ordered by the Mental Health Tribunal may be started before the person concerned can have an appeal against that order heard in the Court. Sometimes that can make the appeal process pointless. In order to make the right of appeal effective it has to be possible for the order of the Mental Health Tribunal to be stayed until the appeal is heard and decided. The Mental Health (Treatment and Care) Amendment Bill 2002 clarifies the law by making it clear that the Supreme Court has the power to order a stay once an appeal has been lodged.

SUMMARY

The Mental Health (Treatment and Care) Amendment Bill 2002 inserts a provision into the Act giving the Supreme Court specific power, once an appeal is made, to order a stay of a Mental Health Tribunal decision until the appeal is decided.

REVENUE/COST IMPLICATIONS

There are no cost implications.

SUMMARY OF CLAUSES

Formal Clauses

Clause 1 sets out the name of the Act.

Clause 2 provides for the Act to commence the day after it is notified.

Clause 3 says that the Act amends the *Mental Health (Treatment and Care) Act 1994*.

Appeals

Clause 4 inserts two new subsections into section 141, which deals with appeals from decisions of the Mental Health Tribunal.

Section 141 allows an appeal to the Supreme Court from a decision of the Mental Health Tribunal. An appeal can be brought by the person who is the subject of the decision or by other people involved in the proceedings leading to the decision.

New section 141(6) provides that if an appeal is made under section 141 against a decision of the Mental Health Tribunal, the Supreme Court can order a stay of the decision appealed

against. The decision of the Mental Health Tribunal can be stayed until the appeal is decided. In addition, the Supreme Court can make any other orders it considers just.

New section 141(7) says that the power in section 141(6) is additional to any other power that the Supreme Court has. This is to ensure that the inclusion of this specific power is not interpreted as reducing other more general powers of the Supreme Court.