



AUSTRALIAN CAPITAL TERRITORY

Mental Health (Treatment and Care) Act 1994

No. 44 of 1994

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AUSTRALIAN CAPITAL TERRITORY

Mental Health (Treatment and Care) Act 1994

No. 44 of 1994

**An Act to provide for the treatment, care, control,
rehabilitation and protection of mentally dysfunctional
persons and for related purposes**

[Notified in ACT Gazette S177: 7 September 1994]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Mental Health (Treatment and Care) Act 1994*.

Commencement

2. (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 a day fixed by the Minister by notice in the *Gazette*.

(3) If the remaining provisions have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Application

3. (1) This Act ceases to have effect—

- (a) if the operation of this Act is not extended—at the expiration of the period of 2 years from the commencement date; or
- (b) if the operation of this Act is extended—at the expiration of the period of 4 years from the commencement date.

(2) For the purposes of subsection (1), the Minister may, at any time before the expiration of the period of 2 years from the commencement date, extend the operation of this Act by notice published in the *Gazette*.

(3) A notice under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(4) In this section—

“commencement date” means the date on which section 4 commences.

Interpretation

4. In this Act, unless the contrary intention appears—

“applicant” means a person who makes an application and includes a referring officer who makes a referral under section 15;

“application” means an application to the Tribunal and includes a referral under section 15;

“approved health facility” means a health facility approved by the Minister under paragraph 48 (a);

“approved mental health facility” means a mental health facility approved by the Minister under paragraph 48 (b);

“assessment” means a psychiatric or psychological assessment;

“child” means a person who has not attained the age of 18 years;

“Children’s Services Act” means the *Children’s Services Act 1986*;

“Community Advocate” means the Community Advocate appointed under section 4 of the *Community Advocate Act 1991*;

“convulsive therapy” means a procedure for the induction of an epileptiform convulsion in a person;

“Council” means the Mental Health Council appointed under section 121;

“Crimes Act” means the *Crimes Act 1900*;

“decision” includes an order;

“determined fee” means the fee determined under section 146 for the purposes of the provision in which the expression occurs;

“Director” means the Director of Mental Health Services appointed under section 112;

“Discrimination Commissioner” means the Discrimination Commissioner appointed under section 112 of the *Discrimination Act 1991*;

“doctor” means a person—

- (a) who is registered as a medical practitioner under the *Medical Practitioners Act 1930*; or
- (b) who is deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

“information statement” means an information statement described in paragraph 50 (1) (b);

“lawyer” means a barrister or solicitor whose name is on the Roll of Barristers and Solicitors kept under the *Legal Practitioners Act 1970*;

“mental dysfunction” means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion;

“mental health facility” means a facility for the treatment, care, rehabilitation or accommodation of mentally dysfunctional persons and includes a psychiatric institution;

“mental health nurse” means a person—

- (a) who is registered under the *Nurses Act 1988* as a mental health nurse; or
- (b) who is deemed to be registered under that Act as a mental health nurse by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

“Mental Health Officer” means a person appointed as a Mental Health Officer under section 119;

“mental health order” means an order of a kind described in section 29 made by the Tribunal;

“mental health professional” means a psychiatrist, psychologist, social worker, therapist or other person who provides services for mentally dysfunctional persons;

“mentally dysfunctional offender” means a person who has been ordered by a court, under Part XIA of the Crimes Act or Part IV of the Children’s Services Act, to submit to the jurisdiction of the Tribunal to enable the Tribunal to make a mental health order in respect of the person;

“neurosurgery” means surgery on the brain of a person for the purpose of treating a pathological condition of the physical structure of the brain;

- “order” includes the variation or revocation of an order;
- “President” means the President of the Tribunal;
- “private psychiatric institution” means an institution in respect of which a licence is issued under Part XII;
- “proceeding” means an inquiry, review or any other proceeding of the Tribunal;
- “psychiatric 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);
- “psychiatric institution” means a hospital or other institution for the treatment, care, rehabilitation or accommodation of persons who have a psychiatric illness, being—
- (a) an institution conducted by the Territory; or
 - (b) a private psychiatric institution;
- “psychiatric surgery” means surgery on the brain of a person, other than neurosurgery;
- “psychiatrist” means a doctor who holds post-graduate qualifications in psychiatry;
- “referring officer”, in relation to a person, means—
- (a) the police officer—
 - (i) who arrests the person in connection with an offence;
 - (ii) who is satisfied that there are sufficient grounds on which to charge the person in connection with an offence; or
 - (iii) who charges the person in connection with an offence;
 - (b) if the person is a child—the authorising officer who consents to the institution of the prosecution of an offence against the child under subsection 33 (1) of the *Children’s Services Act 1986*; or

- (c) a member of the staff of the Office of the Director of Public Prosecutions who has carriage of the prosecution of an offence against the person;

“Registrar” means the Registrar or a Deputy Registrar of the Magistrates Court;

“relative”, in relation to a person, means a spouse, parent, guardian, grandparent, uncle, aunt, brother, sister, half-brother, half-sister, cousin or child (being a child over the age of 18 years) of the person;

“spouse”, in relation to a person, includes a person who is not legally married to the person but who lives with the person on a *bona fide* domestic basis;

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

Persons not to be regarded as mentally dysfunctional

5. For the purposes of this Act, a person is not to be regarded as mentally dysfunctional merely because of any of the following:

- (a) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular political opinion or belief;
- (b) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular philosophy;
- (d) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular sexual preference or sexual orientation;
- (e) that the person engages in or refuses or fails to engage in, or has engaged in or has refused or failed to engage in, a particular political activity;
- (f) that the person engages in or refuses or fails to engage in, or has engaged in or has refused or failed to engage in, a particular religious activity;
- (g) that the person engages in or has engaged in sexual promiscuity;
- (h) that the person engages in or has engaged in immoral conduct;
- (j) that the person engages in or has engaged in illegal conduct;
- (k) that the person takes or has taken alcohol or any other drug;
- (m) that the person engages in or has engaged in antisocial behaviour.

Proceeding relating to children

6. In determining whether a person who is the subject of a proceeding is a child, regard shall be had to the age of the person at the commencement of the proceeding.

PART II—OBJECTIVES**Objectives of Act**

7. This Act has the following objectives:
- (a) to provide treatment, care, rehabilitation and protection for mentally dysfunctional persons in a manner that is least restrictive of their human rights;
 - (b) to provide for mentally dysfunctional persons to receive treatment, care, rehabilitation and protection voluntarily and, in certain circumstances, involuntarily;
 - (c) to protect the dignity and self-respect of mentally dysfunctional persons;
 - (d) to ensure that mentally dysfunctional persons have the right to receive treatment, care, rehabilitation and protection in an environment that is the least restrictive and intrusive, having regard to their needs and the need to protect other persons from physical and emotional harm;
 - (e) to facilitate access by mentally dysfunctional persons to services and facilities appropriate for the provision of treatment, care, rehabilitation and protection.

Objectives of Territory

8. In providing services and facilities for mentally dysfunctional persons, the Territory shall have regard to the following objectives:

- (a) to establish, develop, promote, assist and encourage services and facilities—
 - (i) that provide a strong and viable system of treatment and care, and a full range of services and facilities, for mentally dysfunctional persons;
 - (ii) that take into account the various religious, cultural and language needs of mentally dysfunctional persons;
 - (iii) that minimise the adverse effects of mental dysfunction in the community;
 - (iv) that are comprehensive and accessible;
 - (v) that are designed to reduce the incidence of mental dysfunction in the community;

- (vi) that provide for intervention at an early stage of mental dysfunction; and
- (vii) that support mentally dysfunctional persons in the community and co-ordinate with other community services;
- (b) to ensure that mentally dysfunctional persons are informed of their rights and entitlements under this Act and, in doing so, to make all reasonable efforts to ensure that the relevant provisions of this Act are explained to those persons in the language, mode of communication or terms that they are most likely to understand;
- (c) to assist and encourage voluntary agencies to provide services for mentally dysfunctional persons;
- (d) to promote a high standard of training for those responsible for the care of mentally dysfunctional persons;
- (e) to consult with persons who are receiving or have received such services, their carers and the community about the provision of services and facilities for mentally dysfunctional persons and to establish formal and informal consultative mechanisms for this purpose;
- (f) to promote the welfare of mentally dysfunctional persons and to enhance community awareness of mental health issues.

Maintenance of freedom, dignity and self-respect

9. A person performing a function or exercising a power under this Act, or pursuant to an order of the Tribunal, in relation to a mentally dysfunctional person shall endeavour to ensure that any restrictions on that person's personal freedom and any derogation of that person's dignity and self-respect are kept to the minimum necessary for the proper care and protection of the person and the protection of the public.

PART III—MENTAL HEALTH TRIBUNAL

Establishment

10. The Mental Health Tribunal is established.

Functions

- 11.** The Tribunal has the following functions:
- (a) to hear and determine applications for orders in respect of the treatment, care, control, rehabilitation and protection of mentally dysfunctional persons;
 - (b) to order (if necessary) a psychiatric or psychological assessment of a person who is the subject of a proceeding;
 - (c) to hear and determine applications for the release of persons involuntarily detained under Part V;

- (d) to hear and determine applications for the administration of convulsive therapy;
- (e) to determine the fitness to plead of persons charged with criminal offences, to make orders in respect of the treatment, care, control, rehabilitation and protection of persons found unfit to plead, to review the welfare of those persons and to order (if appropriate) the release of those persons subject to conditions (if any);
- (f) to make orders in respect of the treatment, care, control, rehabilitation and protection of persons found not guilty of criminal offences on the ground of mental illness, to review the welfare of those persons and to order (if appropriate) the release of those persons subject to conditions (if any);
- (g) when requested to do so by a court, to provide advice in relation to the sentencing of a person before the court;
- (h) such other functions as may be conferred on the Tribunal by or under another Act.

Powers

12. The Tribunal may do all things necessary or convenient to be done in connection with the performance of its functions.

PART IV—MENTAL HEALTH ORDERS

Division 1—Applications and referrals

Mentally dysfunctional persons entitled to apply

13. (1) A person may make an application for a mental health order on his or her own behalf if—

- (a) the person believes himself or herself to be unable, because of mental dysfunction—
 - (i) to make reasonable judgments about matters relating to his or her own health or safety; or
 - (ii) to do anything necessary for his or her own health or safety; and, as a result, his or her own health or safety is, or is likely to be, substantially at risk; or
- (b) the person believes himself or herself to be or to be likely to be, because of mental dysfunction, a danger to the community.

(2) An application under subsection (1) shall be accompanied by a statutory declaration setting out detailed reasons as to why the applicant holds the belief referred to in that subsection.

Applications by other persons

14. (1) A person may make an application for a mental health order in respect of another person whom the applicant believes on reasonable grounds—

- (a) is unable, because of mental dysfunction—
 - (i) to make reasonable judgments about matters relating to his or her health or safety; or
 - (ii) to do anything necessary for his or her health or safety;and, as a result, the person's health or safety is, or is likely to be, substantially at risk; or
- (b) is or is likely to be, because of mental dysfunction, a danger to the community.

(2) An application under subsection (1) shall be accompanied by a statutory declaration setting out detailed reasons as to why the applicant holds the belief referred to in that subsection.

(3) If an applicant under this section has reasonable grounds for believing that the appearance of the person who is the subject of the application before the Tribunal is likely to increase substantially—

- (a) the risk to the person's health or safety; or
- (b) the danger to the community;

the applicant shall set out those grounds in the statutory declaration.

Referrals

15. (1) A referring officer may refer an alleged offender to the Tribunal for a mental health order if the referring officer believes on reasonable grounds—

- (a) that, because of mental dysfunction—
 - (i) the alleged offender's health or safety is, or is likely to be, substantially at risk; or
 - (ii) the alleged offender is, or is likely to be, a danger to the community; and
- (b) that, having regard to—
 - (i) the nature and circumstances of the offence; and
 - (ii) the alleged offender's apparent mental condition;

it may not be appropriate to prosecute, or to continue to prosecute, the alleged offender.

(2) A referral shall be accompanied by a statutory declaration setting out detailed reasons as to why the responsible officer holds the belief referred to in subsection (1).

(3) If a referring officer has reasonable grounds for believing that the appearance of the alleged offender before the Tribunal is likely to increase substantially—

- (a) any risk to the alleged offender’s health or safety; or
- (b) any danger to the community;

the referring officer shall set out those grounds in the statutory declaration.

(4) In this section—

“alleged offender” means a person—

- (a) who is arrested in connection with an offence;
- (b) in respect of whom a police officer is satisfied that there are sufficient grounds on which to charge the person in connection with an offence; or
- (c) who is charged in connection with an offence.

Division 2—Assessments

Orders for assessment

16. (1) The Tribunal may make an order for an assessment of a person—

- (a) on an application or referral under Division 1, if the Tribunal is *prima facie* satisfied that the person is mentally dysfunctional and that—
 - (i) the person’s health or safety is, or is likely to be, substantially at risk; or
 - (ii) the person is, or is likely to be, a danger to the community;
- (b) for the purpose of reviewing a mental health order in force in respect of the person under section 36;
- (c) required to submit to the jurisdiction of the Tribunal pursuant to an order under section 83A of the Children’s Services Act;
- (d) required to submit to the jurisdiction of the Tribunal pursuant to an order under Part XIA of the Crimes Act or Part IV of the Children’s Services Act; or
- (e) for the purpose of reviewing an order for detention in force in respect of the person under section 72.

(2) Before making an order in respect of a person referred to in paragraph (1) (a), (b) or (c), the Tribunal shall endeavour to ascertain the views of the person and obtain his or her consent to the order, but nothing in this subsection shall be taken as preventing the Tribunal from making an order without that person’s consent or if that person does not appear before the Tribunal.

(3) The Tribunal is not required to endeavour to ascertain the views, or obtain the consent, of a person referred to in paragraph (1) (d) or (e) before making an order in respect of that person.

(4) An order shall—

- (a) specify the nature of the assessment to be conducted;
- (b) specify the premises at which the assessment is to be conducted and, if appropriate, the person who is to conduct the assessment;
- (c) direct the person to be assessed to attend at those premises and, if necessary, reside at the premises for the purpose of conducting the assessment; and
- (d) direct the person in charge of those premises—
 - (i) if appropriate, to admit the person to be assessed to the mental health facility conducted at the premises for the purpose of conducting the assessment;
 - (ii) if necessary, to detain the person at the premises until the assessment has been conducted; and
 - (iii) to provide such assistance as is necessary and reasonable for the purpose of conducting the assessment.

(5) An order authorises—

- (a) the conduct of the assessment specified in the order; and
- (b) anything necessary to be done for the purpose of conducting the assessment.

(6) Immediately after an order is made under subsection (1), the Registrar shall inform the Community Advocate of the making of the order and its terms.

Assessments to be conducted as soon as practicable

17. An assessment of a person ordered under section 16 shall be conducted as soon as practicable, and in any event within 7 days, after the person attends the premises specified in the order.

Removal to conduct assessments

18. (1) If the Tribunal makes an order for an assessment under section 16 in respect of—

- (a) a person referred to in paragraph 16 (1) (a), (b) or (c), and that person—
 - (i) is not served with a summons under section 90 for a reason specified in subsection 90 (2);
 - (ii) does not appear at the proceeding pursuant to a summons issued under that section; or
 - (iii) does not comply with the order for an assessment; or

(b) a person referred to in paragraph 16 (1) (d) or (e);
the Tribunal may make an order for the removal of the person to a mental health facility for the purpose of conducting the assessment.

(2) An order shall specify—

- (a) the date (being a date not later than 1 month after the date of the making of the order) on which the order ceases to have effect;
- (b) the facility to which the person is to be removed; and
- (c) the nature of the assessment to be conducted in respect of the person.

(3) An order authorises—

- (a) the apprehension of the person named in the order; and
- (b) the removal of that person to the facility specified in the order for the purpose of conducting the assessment specified in the order.

(4) An order may be executed by a police officer.

(5) A police officer executing an order—

- (a) may, with such assistance, and by such force, as is necessary and reasonable, enter any premises for the purpose of apprehending the person;
- (b) shall use the minimum amount of force necessary to apprehend the person and remove him or her to the specified facility; and
- (c) shall, before removing the person, explain to the person the purpose of the order.

Contact with other persons

19. The person in charge of a facility to which a person is admitted pursuant to an order under section 18 shall ensure that, while at the facility, the person has access to facilities, and adequate opportunity, to contact—

- (a) a relative or friend;
- (b) the Community Advocate; and
- (c) a lawyer.

Community Advocate and person's lawyer to have access

20. (1) Where a person is admitted to a facility pursuant to an order under section 16, the Community Advocate and the person's lawyer are entitled to have access, at any time, to the person.

(2) The person in charge of a facility shall, on request by the Community Advocate or the person's lawyer, provide such assistance as is necessary to enable the Community Advocate or the lawyer (as the case may be) to have access to a person who is so admitted.

Person to be informed

21. (1) Before an assessment is conducted pursuant to an order under section 16, the person in charge of the facility shall ensure that the person to be assessed is informed that the Tribunal has ordered that an assessment of him or her be conducted.

(2) Subsection (1) applies notwithstanding that the person to be assessed was present when the Tribunal made the order.

Copies of assessments to Tribunal

22. The person in charge of a facility at which an assessment is conducted pursuant to an order under section 16 shall, as soon as practicable after completion of the assessment, forward a copy of it to—

- (a) the person assessed;
- (b) the President;
- (c) the Community Advocate; and
- (d) if the person assessed was referred to the Tribunal under section 15—the referring officer.

Division 3—Making of orders

Assessment pre-condition to making order

23. The Tribunal shall not make a mental health order in respect of a person without having regard to—

- (a) an assessment of the person conducted pursuant to an order under section 16; or
- (b) another assessment of the person that the Tribunal considers appropriate.

Inquiry to be held

24. Before making a mental health order described in section 29 in respect of a person, the Tribunal shall hold an inquiry into the matter.

Matters to be taken into account

25. In making a mental health order in respect of a person, the Tribunal shall take into account the following matters:

- (a) the views and wishes of the person, so far as they can be ascertained;
- (b) the views and wishes of the persons responsible for the day-to-day care of the person who is the subject of the proceeding, so far as those views and wishes are made known to the Tribunal;
- (c) the views of all persons appearing at the proceeding;
- (d) the views of the persons consulted under section 103;

- (e) that the person's welfare and interests should be appropriately protected;
- (f) that the person's rights should not be interfered with except to the least extent necessary;
- (g) that the person should be encouraged to look after himself or herself;
- (h) that, as far as possible, the person should live in the general community and join in community activities;
- (j) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person;
- (k) the alternative treatments, programs and other services available;
- (m) the purposes of those treatments, programs and services;
- (n) the benefits likely to be derived by the person from those treatments, programs and services;
- (p) the distress, discomfort, risks, side effects or other disadvantages associated with those treatments, programs and services;
- (q) any relevant medical history of the person;
- (r) in the case of a person referred to the Tribunal under section 15 or a mentally dysfunctional offender—the nature and circumstances of the offence in respect of which the person has been arrested, or may be or has been charged;
- (s) in the case of a mentally dysfunctional offender—the nature and extent of the person's mental dysfunction, including the effect it is likely to have on the person's behaviour in the future;
- (t) in the case of a mentally dysfunctional offender—whether or not, if the person is not detained—
 - (i) the person's health or safety is, or is likely to be, substantially at risk; or
 - (ii) the person is, or is likely to be, a danger to the community.

Consent required

26. Subject to section 27, the Tribunal shall not make a mental health order in respect of a person (other than a mentally dysfunctional offender) without the person's consent.

Involuntary orders

27. (1) The Tribunal may make a mental health order in respect of a person (other than a mentally dysfunctional offender) without the person's consent if the Tribunal is satisfied that—

- (a) the person needs to undergo treatment, to undertake a program, to be given care or support, or to be subject to prohibitions or conditions;
- (b) the order is necessary for the person's own protection or for the protection of the community;
- (c) the person—
 - (i) has refused to consent to the order; or
 - (ii) is incapable of weighing for himself or herself the considerations involved in making a decision whether to consent to the order; and
- (d) the treatment, program, care, support, prohibitions or conditions cannot be provided or imposed adequately in a less restrictive or intrusive environment.

(2) Without limiting the kinds of mental health orders that may be made without consent under subsection (1), those orders include the following:

- (a) an order requiring the person to remain in the custody of the person named or described in the order (in this Part called the "custodian") at such premises as the person so named or described specifies;
- (b) an order requiring the person to attend, at the direction of the custodian, at such places and times as the custodian specifies for the purposes of complying with an order of the Tribunal;
- (c) in the case of a person who has a psychiatric illness—an order authorising the Director to administer or cause to be administered such psychiatric treatment to the person as the Director thinks necessary, other than treatment that has, or is likely to have, the effect of subjecting the person to whom it is administered to undue distress or deprivation, having regard to the benefit likely to result from the administration of the treatment.

Powers to make orders

28. (1) This section applies in relation to—

- (a) a person who is the subject of an application or referral under Division 1; or
- (b) a mentally dysfunctional offender.

(2) If, having regard to an assessment under section 23 and after holding an inquiry under section 24, the Tribunal is satisfied—

- (a) that a person is mentally dysfunctional; and
- (b) that—
 - (i) the person's health or safety is, or is likely to be, substantially at risk; or
 - (ii) the person is, or is likely to be, a danger to the community;

the Tribunal may, subject to subsection (3), make a mental health order in respect of the person.

(3) The Tribunal shall not make an order of the kind described in paragraph 29 (a) in respect of a person unless satisfied that the person has a psychiatric illness.

Types of orders

29. The Tribunal may make the following mental health orders:

- (a) an order for a person to undergo psychiatric treatment, other than convulsive therapy or psychiatric surgery;
- (b) an order for a person to undertake a specified counselling, training, therapeutic or rehabilitation program;
- (c) an order for a person to be given specified care or support to enable the person to live in the general community;
- (d) if the Tribunal considers a person is, or is likely to be, a danger to himself or herself or to the community—an order prohibiting the person from engaging in specified conduct;
- (e) an order requiring a person to reside in a specified place subject to specified conditions (if any);
- (f) an order for a review of the mental health orders in force in respect of a person under section 36 after the expiration of a specified period or periodically.

Duration of orders

30. (1) Subject to section 36, a mental health order made in respect of a person (other than a mentally dysfunctional offender) has effect for the period (being no longer than 6 months) specified in the order.

(2) Subject to section 36, a mental health order made in respect of a mentally dysfunctional offender may be expressed to have effect for a period specified in the order.

(3) Nothing in subsection (2) permits the Tribunal to require a person to remain in the custody of another person for a period that is greater than the maximum period of imprisonment to which the person, if convicted of the relevant offence in normal criminal proceedings, could have been sentenced.

Tribunal not to prescribe drugs or clinical procedures

31. Nothing in this Part is to be taken as authorising the Tribunal to make an order in respect of the administration of a particular drug or the way in which a particular clinical procedure is to be carried out.

Powers under custodial orders

32. Where a mental health order of the kind described in paragraph 27 (2) (a) is made in respect of—

- (a) a person (other than a mentally dysfunctional offender) without the person's consent; or
- (b) a mentally dysfunctional offender;

the custodian is authorised—

- (c) to take, or to authorise another person to take, the person to be placed in custody to the premises specified by the custodian and for that purpose—
 - (i) to use such force and such assistance as is necessary and reasonable to apprehend the person and take him or her to the premises specified by the custodian; and
 - (ii) if there are reasonable grounds for believing that the person is at certain premises, to enter those premises using such force and with such assistance as is necessary and reasonable;
- (d) to keep the person in such custody at the premises specified by the custodian as the custodian thinks appropriate;
- (e) to subject the person to such confinement as is necessary and reasonable—
 - (i) to prevent the person from causing harm to himself or herself or to another person; or
 - (ii) to ensure that the person remains in custody pursuant to the order; and
- (f) to subject the person to such restraint (other than confinement) as is necessary and reasonable—
 - (i) to prevent the person from causing harm to himself or herself or to another person; or
 - (ii) to ensure that the person remains in custody pursuant to the order.

Restrictions on communication

- 33. (1)** Despite Part VI but subject to section 34, where—
- (a) a mental health order of the kind described in paragraph 27 (2) (a) is made in respect of—
 - (i) a person (other than a mentally dysfunctional offender) without the person's consent; or
 - (ii) a mentally dysfunctional offender;
 - (b) the Tribunal further orders that restrictions may be imposed on communication between that person and other persons; and
 - (c) the custodian has reasonable grounds for believing that it is necessary, in the interests of the effective treatment of that person, that communication between that person and other persons be restricted;

the custodian may, subject to the order referred to in paragraph (b), impose such restrictions on communication by that person with other persons as are necessary and reasonable to avoid prejudicing the effectiveness of the treatment.

(2) As soon as practicable after imposing restrictions on communication by a person, the custodian shall explain or cause to have explained to the person, in the language, mode of communication or terms that the person is most likely to understand—

- (a) the nature of the restrictions;
- (b) the period during which the restrictions will remain in effect; and
- (c) the reasons for imposing the restrictions.

(3) Restrictions shall not be imposed for a period exceeding 7 days, but nothing in this subsection prevents the imposition of further restrictions immediately after the restrictions previously imposed cease to have effect.

Communication with Community Advocate and person's lawyer

34. Despite section 33, a custodian shall ensure that, during any period of restricted communication imposed on a person under that section—

- (a) the person has access to facilities, and adequate opportunity, to contact the Community Advocate and the person's lawyer; and
- (b) on request by the Community Advocate or the person's lawyer, such assistance as is necessary to enable the Community Advocate or the lawyer (as the case may be) to have access to the person is provided.

Director to explain treatment

35. Where the Tribunal makes a mental health order of the kind described in paragraph 27 (2) (c) in respect of—

- (a) a person (other than a mentally dysfunctional offender) without the person's consent; or
- (b) a mentally dysfunctional offender;

the Director shall explain or cause to have explained to the person, in the language, mode of communication or terms that the person is most likely to understand, the nature and effects (including any side-effects) of the treatment before it is administered.

Review, variation and revocation

36. (1) The Tribunal may, on application or of its own motion, review the mental health orders in force in respect of a person.

(2) If, following a review—

- (a) the Tribunal is satisfied that a person is no longer mentally dysfunctional, the Tribunal shall revoke all of those orders;
- (b) the Tribunal is satisfied that a person remains mentally dysfunctional but—
 - (i) the person's health or safety would not be, and would be unlikely to be, substantially at risk; and
 - (ii) the person is not, and is not likely to be, a danger to the community;

and is satisfied that it is otherwise appropriate to do so, the Tribunal may—

- (iii) vary or revoke any of those orders; or
- (iv) make additional mental health orders in respect of the person; or
- (c) the Tribunal is satisfied that it would be appropriate to do so, the Tribunal may—
 - (i) vary or revoke any of those orders; or
 - (ii) make additional mental health orders in respect of the person.

PART V—EMERGENCY DETENTION AND CARE

Apprehension

37. (1) Where a police officer believes on reasonable grounds that—

- (a) a person is mentally dysfunctional and, as a consequence, requires immediate treatment or care;

- (b) the person has refused to receive that treatment or care; and
- (c) detention is necessary for the person's own health or safety or for the protection of members of the public;

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

(2) Where a doctor or Mental Health Officer believes on reasonable grounds that—

- (a) a person is mentally dysfunctional and, as a consequence, requires immediate treatment or care;
- (b) the person has refused to receive that treatment or care;
- (c) detention is necessary for the person's own health or safety or for the protection of members of the public; and
- (d) adequate treatment or care cannot be provided in a less restrictive environment;

the doctor or Mental Health Officer may apprehend the person and take him or her to an approved health facility.

(3) For the purposes of subsections (1) and (2), a police officer, doctor or Mental Health Officer—

- (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.

Detention

38. Where a person is taken to an approved health facility under section 37, the person in charge of the facility shall detain the person at the facility and while the person is so detained—

- (a) may keep the person in such custody as the person in charge thinks appropriate;
- (b) may subject the person to such confinement as is necessary and reasonable—
 - (i) to prevent the person from causing harm to himself or herself or to another person; or
 - (ii) to ensure that the person remains in custody; and
- (c) may subject the person to such restraint (other than confinement) as is necessary and reasonable—
 - (i) to prevent the person from causing harm to himself or herself or to another person; or
 - (ii) to ensure that the person remains in custody.

Statement of action taken

39. (1) A police officer, doctor or Mental Health Officer shall, as soon as practicable after taking a person to an approved health facility under section 37, prepare and give to the person in charge of the facility a written statement containing a description of the action taken under that section, including the following details:

- (a) the name and address (if known) of the person taken to the facility;
- (b) the date and time when the person was taken to the facility;
- (c) detailed reasons for taking the action;
- (d) the extent of the force or assistance used to enter any premises, or to apprehend the person and to take him or her to the facility.

(2) The person in charge of a facility who receives a statement under subsection (1) shall place the statement with the clinical records of the person whom it concerns.

Examination by doctor

40. The person in charge of an approved health facility shall ensure that a person taken to the facility under section 37 is examined by a doctor employed at the facility within 4 hours of the person arriving at the facility.

Involuntary detention may be authorised

41. (1) Where the doctor who examines a person under section 40 has reasonable grounds for believing that—

- (a) the person is mentally dysfunctional and, as a consequence, requires immediate treatment or care;
- (b) the person has refused to receive that treatment or care;
- (c) detention is necessary for the person's own health or safety or for the protection of members of the public; and
- (d) adequate treatment or care cannot be provided in a less restrictive environment;

the doctor may authorise the involuntary detention and care of the person at an approved mental health facility for a period not exceeding 3 days.

(2) Where—

- (a) a person is detained under subsection (1); and
- (b) an application for further detention is made before the period of detention expires;

the Tribunal may order that, on the expiration of that period, the person be so detained for the further period (not exceeding 7 days) specified in the order.

Certain persons to be notified

42. A doctor shall, within 12 hours after authorising the detention of a person under subsection 41 (1), notify the Community Advocate and the Tribunal of—

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

Penalty: \$500.

Psychiatric examination

43. The person in charge of an approved mental health facility shall ensure that a doctor conducts a physical and psychiatric examination of a person detained at the facility under subsection 41 (1) within 24 hours of the person being so detained.

Treatment during detention

44. The person in charge of a mental health facility at which a person is detained under section 41 shall ensure that during the period of detention—

- (a) any custody under which the person detained is kept;
- (b) any confinement or other restraint to which the person detained is subjected; and
- (c) any treatment administered to the person detained;

is the minimum necessary to prevent any immediate and substantial risk of the person detained causing harm to himself or herself or to another person.

Communication during detention

45. The person in charge of a mental health facility at which a person is detained under section 41 shall ensure that during the period of detention—

- (a) the person detained has access to facilities, and adequate opportunity, to contact the Community Advocate and the person's lawyer; and
- (b) on request by the Community Advocate or the person's lawyer, such assistance as is necessary to enable the Community Advocate or the lawyer (as the case may be) to have access to the person detained is provided.

Penalty:

- (a) for contravention of paragraph (a)—\$2,000;
- (b) for contravention of paragraph (b)—\$5,000.

Orders for release

46. If satisfied that the detention of a person under subsection 41 (1) or (2) is no longer justified—

- (a) the doctor who examined the person under section 43;
- (b) the Director; or
- (c) the Tribunal;

may order the release of the person before the period of detention authorised under that subsection expires.

Duty to release

47. A person in charge of an approved mental health facility shall ensure that a person detained at that facility under subsection 41 (1) or (2)—

- (a) is released in accordance with an order under section 46; or
- (b) if no such order is made and subject to any other order of the Tribunal—is released at the expiration of the period of detention authorised under subsection 41 (1) or (2).

Penalty: \$5,000 or imprisonment for 6 months, or both.

Approved facilities

48. The Minister may, by notice in the *Gazette*, approve—

- (a) a health facility as a facility to which persons may be taken under section 37; or
- (b) a mental health facility as a facility at which persons may be involuntarily detained and cared for under section 41.

PART VI—RIGHTS OF MENTALLY DYSFUNCTIONAL PERSONS

Interpretation

49. In this Part—

“responsible person”—

- (a) in relation to a mental health facility that is not conducted by the Territory—means the owner of the facility;
- (b) in relation to a psychiatric institution conducted by the Territory—means the Director; or
- (c) in relation to any other mental health facility conducted by the Territory—means the Chief Executive who has control of the administrative unit to which responsibility for the conduct of the facility is allocated.

Statement of rights

50. (1) The responsible person shall ensure that on admission to, or before receiving treatment at, the mental health facility, a person—

- (a) is orally advised of his or her rights under this Act; and
- (b) is given a copy of an information statement containing—
 - (i) a prescribed statement setting out the rights and entitlements of persons under this Act, including the right to obtain legal advice and the right to seek a second opinion from an appropriate mental health professional; and
 - (ii) any other information relating to the treatment and care of the person that the Minister considers relevant.

(2) The responsible person shall ensure that, wherever possible, a person is given an information statement in a language with which the person is familiar.

(3) The responsible person shall ensure that, if a person appears to be incapable of reading and understanding an information statement, then as far as practicable arrangements are made to convey the information contained in the statement to the person in the language, mode of communication or terms that the person is most likely to understand.

(4) The responsible person shall ensure that, if a person appears to be unable to understand the information contained in an information statement, the Community Advocate is informed of that fact.

Information to be provided

51. The responsible person shall ensure that the following items are kept at the mental health facility in a place readily accessible to all persons admitted to, or receiving treatment at, the facility:

- (a) copies of this Act, the *Guardianship and Management of Property Act 1991* and any other relevant legislation;
- (b) copies of any publications prepared by the administrative unit to which responsibility for the administration of that legislation is allocated for the purpose of explaining the legislation;
- (c) copies of information statements printed in different languages;
- (d) a list of the addresses and telephone numbers of the offices of, and the relevant functions of, the following:
 - (i) the Tribunal;
 - (ii) the Supreme Court;
 - (iii) the Magistrates Court;
 - (iv) the Community Advocate;
 - (v) the Director;

- (vi) the Legal Aid Commission;
- (vii) the Ombudsman.

Communication

52. (1) The responsible person shall ensure that all persons admitted to, or receiving treatment at, the mental health facility are given reasonable opportunities to communicate with persons of their choice by means other than written communication.

(2) The responsible person shall ensure that a person admitted to, or receiving treatment at, the mental health facility is provided, on request, with facilities for preparing written communications and for enclosing those communications in sealed envelopes.

(3) The responsible officer shall ensure any written communication addressed to or written by a person admitted to, or receiving treatment at, the mental health facility (other than a mentally dysfunctional offender) is forwarded without being opened and without delay to the person to whom it is addressed.

(4) Subject to any security conditions imposed under any Act, the responsible officer shall ensure any written communication addressed to or written by a mentally dysfunctional offender is forwarded without being opened and without delay to the person to whom it is addressed.

Failure by owner to comply

53. The owner of a mental health facility that is not conducted by the Territory who, without reasonable excuse, fails to comply with this Part is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

PART VII—CONVULSIVE THERAPY AND PSYCHIATRIC SURGERY

Division 1—Consent

Informed consent

54. (1) For the purposes of this Part, a person gives informed consent to a procedure if the consent is given by the person after—

- (a) the person has been given a clear explanation of the procedure that contains sufficient information to enable the person to make a balanced judgment about whether or not to consent to the procedure;
- (b) the person has been given an adequate description (without exaggeration or concealment) of the benefits, discomfort and risks involved in the procedure;

- (c) the person has been advised of all alternative treatments reasonably available that may be of benefit to the person;
- (d) the person has been given an opportunity to ask any questions about the procedure, those questions have been answered and the person appears to have understood the answers;
- (e) a full disclosure has been made to the person of any financial relationship between the person seeking to obtain the consent, the doctor who is proposing to conduct the procedure or both (as the case may be) and the psychiatric institution at which it is proposed to conduct the procedure;
- (f) the person has been given, has read and appears to have understood a notice stating that—
 - (i) the person has the right to obtain independent legal and medical advice and any other independent advice or assistance before giving informed consent; and
 - (ii) the person is free to refuse or withdraw consent and to have the procedure discontinued at any time; and
- (g) the person has been given an information statement.

(2) For the purposes of this Part, informed consent shall be given in writing signed by the person giving the consent and witnessed by a person, other than the person seeking to obtain the consent or the doctor who is proposing to conduct the procedure.

(3) In this section—

“procedure” means—

- (a) the administration of convulsive therapy; or
- (b) the performance of psychiatric surgery.

Division 2—Convulsive therapy

Restrictions on use

55. (1) A person who is not a doctor shall not administer convulsive therapy to another person unless he or she is authorised to do so by a doctor.

Penalty: \$10,000 or imprisonment for 12 months, or both.

(2) A doctor shall not administer, or authorise the administration of, convulsive therapy to a person (other than a person in respect of whom a mental health order of the kind described in paragraph 29 (a) is in force)—

- (a) unless the person has given informed consent to the administration of convulsive therapy; or
- (b) if convulsive therapy has been administered to the person on more than 9 occasions since that consent was given.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) A doctor shall not administer, or authorise the administration of, convulsive therapy to a person in respect of whom a mental health order of the kind described in paragraph 29 (a) is in force—

- (a) unless the Tribunal has approved the administration of convulsive therapy to the person; or
- (b) if convulsive therapy has been administered to the person on more than 9 occasions since the Tribunal so approved the administration of convulsive therapy to the person.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(4) An application for an order for the administration of convulsive therapy—

- (a) shall be made by the Director or a doctor; and
- (b) shall be supported by the evidence of a psychiatrist who is not the applicant.

(5) The Tribunal shall not make an order for the administration of convulsive therapy to a person unless—

- (a) the person has given informed consent to the administration of convulsive therapy and that consent has not been withdrawn; or
- (b) if the person is, by reason of psychiatric illness, incapable of weighing for himself or herself the considerations involved in making a decision whether or not to consent to the administration of convulsive therapy, the Tribunal is satisfied that—
 - (i) the administration of the therapy is likely to result in substantial benefit to the person; and
 - (ii) it is the most appropriate form of treatment reasonably available.

Withdrawal of consent

56. A doctor shall not administer, or authorise the administration of, convulsive therapy to a person who has given informed consent for the purposes of paragraph 55 (2) (a) or (5) (a) if, before the therapy is administered, the person withdraws that consent either orally or in writing.

Penalty: \$5,000 or imprisonment for 6 months, or both.

Therapy to be recorded

57. A doctor who administers or authorises the administration of convulsive therapy—

- (a) shall make a record of that administration or authorisation; and
- (b) shall deliver that record to the person in charge of the psychiatric institution at which the therapy is, or is to be, administered.

Penalty: \$2,000.

Records to be kept for 5 years

58. A person in charge of a psychiatric institution shall retain a record delivered under paragraph 57 (b) for at least 5 years after the date of delivery.

Penalty: \$2,000.

Division 3—Psychiatric surgery**Performance on persons subject to orders of Tribunal**

59. Psychiatric surgery may be performed on a person under this Part despite any order of the Tribunal in force in relation to the person.

Approval and consent required

60. A doctor shall not knowingly perform psychiatric surgery on a person—

- (a) except in accordance with the approval of the Director; or
- (b) after he or she is informed under section 66 that the person refuses to have the surgery performed.

Penalty: \$10,000 or imprisonment for 12 months, or both.

Application for approval

61. An application for the approval of the Director for the performance of psychiatric surgery—

- (a) shall be made in writing by the doctor proposing to perform the surgery; and
- (b) shall be delivered to the Director together with—
 - (i) a copy of the informed consent of the person on whom it is proposed the surgery will be performed; or
 - (ii) a copy of an order of the Supreme Court under section 65.

Application to be considered by committee

62. (1) The Director shall, as soon as practicable after receiving an application in accordance with section 61, submit the application to a committee appointed under section 67 by delivering a copy of the application to the chairperson of the committee.

(2) A committee—

- (a) shall consider an application submitted to it; and
- (b) in a report to the Director—
 - (i) shall recommend whether or not the Director should approve the performance of the psychiatric surgery; and

- (ii) if the committee recommends that the Director should approve the performance of the surgery—shall recommend the conditions (if any) to which the approval should be subject.

(3) A committee shall not recommend that the Director should approve the performance of psychiatric surgery unless—

- (a) the committee is satisfied—
 - (i) that there are reasonable grounds for believing that the performance of the surgery will result in substantial benefit to the person on whom it is proposed to be performed; and
 - (ii) that all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the person; and
- (b) the recommendation is supported by the psychiatrist and the neurosurgeon on the committee.

Director may require further information

63. (1) The Director shall, at the request of a committee and by notice in writing delivered to the doctor, require the doctor who made the application under section 61 to produce to the Director the documents or other information specified in the notice.

(2) Where a requirement is imposed under subsection (1), the committee is not required to give further consideration to the application until the documents and other information specified in the notice are produced to the Director.

(3) The Director shall deliver any documents and other information produced in compliance with a requirement under subsection (1) to the chairperson of the committee.

(4) Nothing in this section authorises the Director to require the production of documents or other information, other than documents or information relevant to the application being considered by the committee.

Director to act on committee's recommendation

64. The Director shall deal with an application under section 61 in accordance with the committee's recommendations.

Consent of Supreme Court

65. Where the Supreme Court is, on application by a doctor, satisfied that—

- (a) the person in relation to whom the application is made has a psychiatric illness;
- (b) the person has not given informed consent to the performance of psychiatric surgery and has not refused, either orally or in writing, to consent to such surgery;

- (c) there are grounds for believing that the performance of such surgery is likely to result in substantial benefit to the person; and
- (d) all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the person;

the Court may, by order, consent to the performance of psychiatric surgery on the person.

Refusal of surgery

66. (1) A person—

- (a) who has given informed consent to the performance of psychiatric surgery; or
- (b) in respect of whom the Supreme Court has made an order consenting to the performance of such surgery under section 65;

may, before the psychiatric surgery is performed, inform the Director or any other person, either orally or in writing, that he or she refuses to have the surgery performed.

(2) A person (other than the Director) who is informed that another person refuses to have psychiatric surgery performed on himself or herself shall forthwith inform the Director of the refusal.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) Where the Director—

- (a) has approved the performance of psychiatric surgery on a person under section 64; and
- (b) is informed under subsection (1) or (2), other than by the doctor who is to perform the surgery, that the person refuses to have the surgery performed;

the Director shall forthwith inform the doctor of the refusal.

(4) Where the Director is informed under subsection (1) or (2) that a person refuses to have psychiatric surgery performed—

- (a) any informed consent to the performance of the surgery given by the person, or any order made by the Supreme Court under section 65 in respect of the person, ceases to have effect;
- (b) if, immediately before the date of the refusal, an application for the approval of the performance of the surgery has been made but has not been determined—the application is to be taken to have been withdrawn on that date; and
- (c) any approval given by the Director for the performance of the surgery ceases to have effect.

Committees

67. (1) For the purposes of section 62, the Minister shall appoint a committee consisting of—

- (a) a psychiatrist;
- (b) a neurosurgeon;
- (c) a lawyer;
- (d) a clinical psychologist; and
- (e) a social worker.

(2) The Minister shall appoint a member of a committee to be the chairperson of the committee.

(3) A member of a committee shall be paid such remuneration and allowances (if any) as are prescribed.

(4) The chairperson of a committee shall convene meetings of the committee.

(5) Subject to paragraph 62 (3) (b), a question arising at a meeting of a committee shall be decided in accordance with the opinion of a majority of members of the committee.

PART VIII—REFERRALS BY COURTS UNDER THE CRIMES ACT AND THE CHILDREN’S SERVICES ACT

Determination of fitness to plead

68. (1) In this section—

“order to determine fitness” means an order of the Supreme Court under Part XIA of the Crimes Act requiring a person to submit to the jurisdiction of the Tribunal to enable the Tribunal to determine whether or not the person is fit to plead to a charge laid against the person.

(2) Following such inquiry as the Tribunal thinks appropriate, the Tribunal shall determine, on the balance of probabilities—

- (a) whether or not a person who is subject to an order to determine fitness is fit to plead to the charge; and
- (b) if the Tribunal determines that the person is unfit to plead to the charge, whether or not the person is likely to become fit within 12 months after the determination is made.

(3) The Tribunal shall not make a determination that a person is fit to plead to a charge unless satisfied that the person is capable of—

- (a) understanding what it is that he or she has been charged with;
- (b) pleading to the charge and exercising his or her right of challenge;

- (c) understanding that the proceeding before the Supreme Court will be an inquiry as to whether or not the person did what he or she is charged with;
- (d) following, in general terms, the course of the proceeding before the Court;
- (e) understanding the substantial effect of any evidence given against him or her;
- (f) making a defence to, or answering, the charge;
- (g) deciding what defence he or she will rely on;
- (h) giving instructions to his or her legal representative (if any); and
- (j) making his or her version of the facts known to the Court and to his or her legal representative (if any).

(4) The Tribunal shall notify the Supreme Court of its determination in respect of a person and may make recommendations to the Court as to how the person should be dealt with.

Review of persons temporarily unfit to plead

69. (1) Where—

- (a) the Tribunal has made a determination under section 68 that a person is unfit to plead to a charge but is likely to become fit within 12 months after the determination (in this subsection called the “initial determination”) and a period of 6 months has elapsed since the initial determination was made (in this subsection called the “first review period”); or
- (b) the Tribunal has made a determination after the first review period under this section that a person remains unfit to plead to a charge and a period of 12 months has elapsed since the initial determination was made;

the Tribunal shall, as soon as practicable, review the initial determination and determine, on the balance of probabilities, whether or not the person remains unfit to plead.

(2) The Tribunal shall notify the Supreme Court of its determination in respect of a person and may make recommendations to the Court as to how the person should be dealt with.

Recommendations about mentally dysfunctional persons

70. (1) In this section—

“order for recommendations” means—

- (a) an order of the Supreme Court under Division 3 of Part XIA of the Crimes Act requiring a person to submit to the jurisdiction of the Tribunal to enable the Tribunal to make recommendations to the Court as to how the person should be dealt with; or
- (b) an order of a court under Division 4 or 5 of Part XIA of the Crimes Act, or under Part IV or section 83A of the Children’s Services Act, requiring a person to submit to the jurisdiction of the Tribunal to enable the Tribunal—
 - (i) to determine whether or not the person is mentally dysfunctional; and
 - (ii) if the Tribunal determines that the person is mentally dysfunctional, to make recommendations to the court as to how the person should be dealt with.

(2) Following such inquiry as the Tribunal thinks appropriate in respect of a person who is subject to an order for recommendations under Division 3 of Part XIA of the Crimes Act, the Tribunal shall make recommendations to the Supreme Court as to how the person should be dealt with.

(3) Following such inquiry as the Tribunal thinks appropriate in respect of a person who is subject to an order for recommendations under Division 4 or 5 of Part XIA of the Crimes Act or under the Children’s Services Act—

- (a) the Tribunal shall determine, on the balance of probabilities, whether or not the person is mentally dysfunctional; and
- (b) if the Tribunal determines that the person is mentally dysfunctional, the Tribunal shall make recommendations to the court as to how the person should be dealt with.

Service of determinations and recommendations

71. The Registrar shall serve a copy of a determination or recommendation made under section 68, 69 or 70 on—

- (a) the person in respect of whom the determination or recommendation is made;
- (b) the representative of that person (if any);
- (c) the Community Advocate;
- (d) the Director of Public Prosecutions; and
- (e) if the person in respect of whom the determination or recommendation is made is a child—the Director of Family Services.

Periodic review of orders for detention

72. (1) In this section—

“order for detention” means—

- (a) a mental health order requiring a mentally dysfunctional offender to remain in the custody of another person at the mental health facility specified in the order;
- (b) an order of the Supreme Court under Part XIA of the Crimes Act requiring a person to be detained in custody until the Tribunal orders otherwise; or
- (c) an order of the Tribunal requiring a person to be detained in custody under section 74.

(2) Where a person has been in custody pursuant to an order for detention—

- (a) for a period of 6 months; or
- (b) for a further period of 6 months following the last review of the order under this section;

the Tribunal shall, as soon as practicable, review the order for detention and may order the release of the person.

(3) In considering whether or not to order the release of a person, the Tribunal shall have regard to the following:

- (a) the nature and extent of the person’s mental dysfunction, including the effect it is likely to have on the person’s behaviour in the future;
- (b) whether or not, if released—
 - (i) the person’s health or safety would be, or would be likely to be, substantially impaired; or
 - (ii) the person would be, or would be likely to be, a danger to the community;
- (c) the nature and circumstances of the offence with which the person was charged.

(4) An order for the release of a person may be made subject to such conditions (if any) as the Tribunal thinks appropriate, including a requirement to comply with specified mental health orders.

(5) If, on a review, the Tribunal does not order the release of a person, the Tribunal may—

- (a) make mental health orders (including additional orders) in respect of the person; or
- (b) vary or revoke any of the mental health orders in force in respect of the person.

Review of conditions of release

73. The Tribunal may, on application or on its own motion, review the conditions in force in respect of a person released from detention under subsection 72 (4) and may—

- (a) vary or revoke any of those conditions, including any requirement to comply with specified mental health orders; or
- (b) impose such other conditions as the Tribunal thinks appropriate, including a requirement to comply with specified mental health orders.

Breach of conditions of release

74. If a person released from detention breaches a condition in force in respect of the person under subsection 72 (4), the Tribunal may order the person to be detained in custody until the Tribunal orders otherwise.

Limit on detention

75. Nothing in section 72 or 74 permits the Tribunal to require a person to remain in custody for a period that is, or for periods that in the aggregate are, greater than the maximum period of imprisonment to which the person, if convicted of the relevant offence in normal criminal proceedings, could have been sentenced.

PART IX—TRIBUNAL MEMBERSHIP AND PROCEDURE

Division 1—Members and staff

Membership

76. The Tribunal shall consist of—

- (a) a President who shall be—
 - (i) a Magistrate; or
 - (ii) a person who is enrolled as a legal practitioner (however described) of the High Court, another federal court or the Supreme Court of the Territory, a State or another Territory and has been so enrolled for at least 5 years;
- (b) a panel of not more than 9 psychiatrists chosen by the Minister;
- (c) a panel of not more than 9 psychologists chosen by the Minister; and
- (d) a panel of not more than 9 members of the community chosen by the Minister who are not psychiatrists or psychologists but who, in the opinion of the Minister, are suitable to deal with the needs of mentally dysfunctional persons.

Constitution for performance of certain functions

77. (1) For the purpose of—

- (a) making an order for an assessment under section 16;
- (b) making an order for the removal of a person under section 18;
- (c) ordering the detention of a person under subsection 41 (2); or
- (d) ordering the release of a person under section 46;

the Tribunal shall be constituted by the President.

(2) For the purpose of—

- (a) making a mental health order;
- (b) reviewing a mental health order under section 36;
- (c) making an order for the administration of convulsive therapy under section 55;
- (d) making a determination under section 68;
- (e) reviewing a determination under section 69;
- (f) making a recommendation under section 70;
- (g) reviewing an order for detention under section 72; or
- (h) reviewing the conditions in force in respect of a person released from detention under section 73;

the Tribunal shall be constituted by—

- (j) the President;
 - (k) where the person who is the subject of the proceeding appears to the President to have—
 - (i) a psychiatric illness (whether the person has any other kind of mental dysfunction or not)—a psychiatrist chosen by the President from the panel referred to in paragraph 76 (b); or
 - (ii) a mental dysfunction other than a psychiatric illness—a psychiatrist chosen by the President from the panel referred to in paragraph 76 (b) or a psychologist chosen by the President from the panel referred to in paragraph 76 (c), according to whether the President considers a psychiatrist or a psychologist to be most suitable to deal with the matter; and
 - (m) a member chosen by the President from the panel referred to in paragraph 76 (d).
- (3)** If—
- (a) the Tribunal as constituted for the purpose of a proceeding includes a psychologist; and

- (b) it becomes apparent during the course of the proceeding that the person who is the subject of the proceeding has a psychiatric illness;

the psychologist shall cease to be a member of the Tribunal for the purposes of that proceeding and the proceeding shall be completed by the President, the remaining member and a psychiatrist chosen by the President from the panel referred to in paragraph 76 (b).

(4) Subject to subsection (5), if a member of the Tribunal other than the President ceases to be available before the completion of a proceeding for a purpose referred to in subsection (2), the proceeding shall be completed by the President and the remaining member.

(5) If the President is of the opinion that it would be prejudicial to the interests of the person who is the subject of a proceeding to complete the proceeding with only 2 members, the proceeding shall be completed by the President, the remaining member and a person appointed under section 82 to act on behalf of the member who has ceased to be available.

(6) If the Tribunal is reconstituted under subsection (3) or (5), the reconstituted Tribunal may have regard to any evidence or information given, or documents produced, to the Tribunal as previously constituted under subsection (2).

Appointment

78. The members of the Tribunal shall be appointed in writing by the Executive.

Terms and conditions

79. (1) The President holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for reappointment.

(2) A member of the Tribunal other than the President holds office for the period (not exceeding 3 years) specified in the instrument of appointment but is eligible for reappointment.

(3) A member may be appointed as a full-time or part-time member.

(4) Subject to this Part, a member holds office on the terms and conditions (including terms and conditions relating to remuneration and allowances) specified in the instrument of appointment.

Expenses

80. The Territory shall reimburse a member referred to in subparagraph 76 (a) (ii) for expenses reasonably incurred by the member in the performance of the member's duties or functions.

Resignation

81. A member of the Tribunal may resign in writing signed by the member and given to the Executive.

Acting members

82. (1) The Executive may appoint a person to act as a member of the Tribunal—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period or during all periods when the member is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office;

but the person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) A person shall not be appointed to act as the President unless the person is eligible to be appointed as the President.

(3) A person shall not be appointed to act as a member referred to in paragraph 76 (b), (c) or (d) unless the person is eligible to be appointed as that member.

(4) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there was a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Staff

83. (1) The staff required to assist the Tribunal in the performance of its functions shall be public servants.

(2) A member of the staff of the Tribunal is subject to the direction of the President in performing or exercising a function or power on behalf of the Tribunal.

Protection of members etc.

84. No action, suit or proceeding lies against a person who is or has been—

- (a) a member of the Tribunal;
- (b) a member of the staff of the Tribunal;
- (c) acting under the direction or authority of the Tribunal; or

- (d) participating in a proceeding;

in relation to an act done or omitted to be done in good faith in the performance of a function, or the exercise or purported exercise of a power, under or in relation to this Act or another Act.

Secrecy

85. (1) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is or has been—

- (a) a member of the Tribunal;
- (b) a member of the staff of the Tribunal; or
- (c) authorised to perform a function or exercise a power in connection with the Tribunal, under or in relation to this Act or another Act;

“produce” includes permit access to;

“protected information” means information that—

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies because of the performance of a function or exercise of a power by the person in connection with the Tribunal, under or in relation to this Act or another Act.

(2) Subject to subsection (3), a person to whom this section applies shall not—

- (a) make a record of information; or
- (b) directly or indirectly divulge or communicate to a person protected information concerning another person;

unless the record is made or the information divulged or communicated in relation to the performance of a function or exercise of a power, as a person to whom this section applies, under or in relation to this Act or another Act.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of that other person.

(4) A person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or

(b) to produce a document containing protected information to a court; except where it is necessary to do so for the purposes of this Act or that other Act.

Annual report

86. The Tribunal shall, after each financial year, furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Tribunal during that year.

Division 2—Procedural matters

Lodgment of applications

87. (1) An application and any accompanying documents shall be lodged with the Registrar.

(2) The Registrar shall forward copies of any documents lodged under subsection (1) to—

- (a) the President;
- (b) the Community Advocate; and
- (c) if the person who is the subject of an application is a child—the Director of Family Services;

as soon as practicable, and in any event within 24 hours, after lodgment.

Sittings

88. The Tribunal shall sit at such times and in such places in the Territory as the President determines.

Appearance, representation and use of interpreters

89. (1) The following persons are entitled to appear and give evidence at a proceeding:

- (a) the person who is the subject of the proceeding;
- (b) if that person is a child—the person's parents;
- (c) if that person has a guardian—the guardian;
- (d) the applicant (if any);
- (e) the Community Advocate;
- (f) the Director;
- (g) the Chief Executive who has control of the administrative unit to which responsibility for the provision of treatment, care and protection for mentally dysfunctional persons (other than persons who have a psychiatric illness) is allocated;
- (h) the Discrimination Commissioner;
- (j) if the person who is the subject of the proceeding is a child—the Director of Family Services.

(2) Other persons may appear and give evidence at a proceeding only by leave of the Tribunal.

(3) A person appearing at a proceeding may be represented by an agent or a lawyer.

(4) Where—

(a) the person who is the subject of the proceeding is a child;

(b) the child is not separately represented; and

(c) it appears to the Tribunal that the child should be so represented;

the Tribunal may, of its own motion or on the application of any person (including the child)—

(d) adjourn the proceedings in order that the child may obtain representation; and

(e) give such advice and assistance to the child as may be necessary to enable the child to obtain representation.

(5) Section 63A of the *Evidence Act 1971* applies in relation to the provision of an interpreter for a person appearing or giving evidence before the Tribunal.

(6) Nothing in this section shall be taken as preventing a person from making a written submission to the Tribunal in respect of a proceeding.

Summons to appear in person

90. (1) Subject to subsection (2), the Registrar shall summon the person who is the subject of a proceeding to appear in person at the proceeding if satisfied that it is necessary for the purposes of the proceeding.

(2) The Registrar shall not summon a person under subsection (1) if satisfied that the appearance of the person before the Tribunal is likely to increase substantially—

(a) any risk to the person's health or safety; or

(b) any danger to the community.

(3) If the Registrar does not summon a person for a reason specified in subsection (2), the Registrar shall make a notation to that effect on any application lodged under section 87.

(4) Where the Registrar has decided not to summon a person, the Tribunal may, on its own motion, summon the person to appear in person before it if the Tribunal is satisfied that it is necessary for the purposes of the proceeding.

(5) A summons issued under this section shall—

(a) be in the prescribed form;

(b) specify the time and place at which the person being summoned is to appear before the Tribunal;

- (c) contain a statement to the effect that the person being summoned is entitled to be represented before the Tribunal by an agent or a lawyer and that the person may wish to obtain legal advice in relation to the summons;
- (d) be accompanied by a notice in the prescribed form containing information about the functions and powers of the Tribunal and of the Community Advocate; and
- (e) be accompanied by a copy of any relevant order under Part XIA of the Crimes Act or under Part IV or section 83A of the Children's Services Act.

Person summoned in custody

91. If a person summoned to appear before the Tribunal is in the custody of another person, the Tribunal may order that other person to ensure that the person summoned does so appear and attends before the Tribunal as required.

Arrest of persons failing to appear

92. (1) If a person who is summoned to appear before the Tribunal does not so appear or does not attend before the Tribunal as required, the President may, on proof of the service of the summons, issue a warrant for the apprehension of the person.

(2) A warrant authorises—

- (a) the apprehension of the person named in the warrant;
- (b) the bringing of the person before the Tribunal; and
- (c) the detention of the person at the place specified in the warrant for that purpose until the person is released by order of the Tribunal.

(3) A warrant may be executed by a police officer.

(4) A police officer executing a warrant—

- (a) may, with such assistance, and by such force, as is necessary and reasonable, enter any premises for the purpose of apprehending the person named in the warrant;
- (b) shall use the minimum amount of force necessary to apprehend that person and remove him or her to the place specified in the warrant; and
- (c) shall, before removing the person, explain to the person the purpose of the warrant.

Directions to Registrar

93. (1) Subject to subsection (2), after considering an assessment of the person who is the subject of a proceeding but before holding an inquiry or a review, the President may give such directions to the Registrar as the President considers appropriate for the purposes of—

- (a) defining and limiting the matters relevant in the proceeding, including—
 - (i) the alternative treatments, programs and other services that are available and may be appropriate for the person who is the subject of the proceeding;
 - (ii) the evidence that appears to be relevant to the proper disposition of the matter; and
 - (iii) any unusual or urgent factors requiring special attention; and
- (b) ensuring all necessary measures are taken to enable the inquiry or review to proceed expeditiously, including—
 - (i) the provision of all relevant particulars;
 - (ii) the notification of persons who may be entitled to appear and give evidence in the proceeding and the ascertainment of the availability of those persons and of any related factors requiring special attention;
 - (iii) the notification of persons who may wish to apply for leave to appear and give evidence in the proceeding;
 - (iv) giving persons not entitled to appear in the proceeding but who may be interested in making written submissions about the matter an opportunity to do so; and
 - (v) the identification of the issues (if any) that may be determined prior to the inquiry or review.

(2) The President is not entitled to give directions under subsection (1) in relation to a proceeding conducted for the purposes of a function described in paragraph 11 (e), (f) or (g).

Notice of proceedings

94. At least 3 days before the Tribunal holds an inquiry or review in respect of a matter, the Registrar shall give written notice of the proceeding to the following persons:

- (a) if the person who is the subject of the proceeding is not summoned under section 90 for a reason other than a reason specified in subsection 90 (2)—that person;
- (b) the representative of that person (if any);

- (c) if the person who is the subject of the proceeding is a child—the person's parents;
- (d) if the person who is the subject of the proceeding has a guardian—the guardian;
- (e) the applicant (if any);
- (f) the Community Advocate;
- (g) the Director;
- (h) the Chief Executive who has control of the administrative unit to which responsibility for providing treatment, care and protection for mentally dysfunctional persons (other than persons who have a psychiatric illness) is allocated;
- (j) the Discrimination Commissioner;
- (k) if the person who is the subject of the proceeding is a child—the Director of Family Services;
- (m) any other person whom the Tribunal or the Registrar considers appropriate.

Proceedings to be in private

95. (1) A proceeding in respect of a person (other than a child) shall be held in private unless—

- (a) the person who is the subject of the proceeding requests that the proceeding be held in public; or
- (b) the Tribunal orders otherwise.

(2) A proceeding in respect of a child shall be held in private.

(3) A person is not entitled to be present at a proceeding being held in private unless the person is—

- (a) a member of the Tribunal;
- (b) a member of the staff of the Tribunal;
- (c) a person entitled to appear under section 89;
- (d) a representative of a person entitled to appear under that section;
- (e) a member of the staff of the Community Advocate;
- (f) a person nominated by the Discrimination Commissioner;
- (g) giving evidence; or
- (h) present with the leave of the Tribunal.

(4) Before making a decision for the purposes of paragraph (3) (h), the Tribunal shall endeavour to ascertain the wishes of the person who is the subject of the proceeding.

Natural justice

96. The Tribunal is bound by the rules of natural justice.

Evidence

97. (1) In a proceeding conducted for the purpose of carrying out a function described in paragraph 11 (a) or (b), the Tribunal is not bound by the rules of evidence but may inform itself on any matter relevant to a proceeding in such manner as it thinks fit.

(2) In a proceeding conducted for the purpose of carrying out a function described in paragraph 11 (c), (d), (e), (f), (g) or (h), the Tribunal is bound by the rules of evidence.

(3) Evidence in a proceeding may be given orally or in writing.

(4) For the purposes of a proceeding, the Tribunal may take evidence on oath or affirmation and for that purpose the President may—

- (a) require a person appearing before the Tribunal to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to such a person.

(5) For the purposes of a proceeding, the President may require a person appearing before the Tribunal—

- (a) to answer a question relevant to the proceeding; or
- (b) to produce a document relevant to the proceeding.

Admissibility of evidence in other proceedings

98. A statement or disclosure made, or a document or other thing produced, by a person in the course of a proceeding, or any information, document or thing obtained as a direct or indirect consequence of the making of the statement or disclosure, or of the production of the first-mentioned document or thing, is not admissible in evidence in any civil or criminal proceeding except—

- (a) a proceeding under this Act;
- (b) a proceeding under Part XIA of the Crimes Act;
- (c) a proceeding in respect of an appeal to the Supreme Court under section 141; or
- (d) a proceeding for an offence against this Act.

Determination of questions

99. (1) A question of law arising at a proceeding shall be decided according to the opinion of the President.

- (2) Subject to subsection (1)—
- (a) where the Tribunal is constituted in accordance with subsection 77 (2), (3) or (5) and there is a division of opinion in relation to a question, the question shall be decided according to the opinion of the majority; or
 - (b) where the Tribunal is constituted in accordance with subsection 77 (4) and there is a division of opinion in relation to a question, the question shall be decided according to the opinion of the President.

Assistance for Tribunal

100. The Tribunal may appoint a lawyer, doctor or any other person with appropriate expertise to assist it in relation to a proceeding.

Power to obtain information and documents

101. (1) Where the President is satisfied that a person is capable of providing information or producing a document relevant to a proceeding, the President may, by written notice given to the person, require the person—

- (a) to provide the information to the President in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
- (b) to produce the document to the President.

(2) A notice shall state—

- (a) the place at which the information or document is to be provided or produced to the President; and
- (b) the time at which, or the period within which, the information or document is to be so provided or produced.

(3) Where the President is satisfied that a person has information relevant to a proceeding, the President may, by written notice given to the person, require the person to attend before the Tribunal at a time and place specified in the notice and to answer questions relevant to the proceeding.

(4) A person shall not, without reasonable excuse, fail to—

- (a) provide information or produce a document when required to do so under subsection (1); or
- (b) answer a question under subsection (3).

Penalty: \$5,000 or imprisonment for 6 months, or both.

Retention of documents

102. Where a document is produced to the President in accordance with a requirement under paragraph 97 (5) (b) or 101 (1) (b), the President—

- (a) may take possession of, and may make a copy of, or take extracts from, the document;

- (b) may retain possession of the document for such period as is necessary for the purposes of the proceeding; and
- (c) during that period shall permit a person who would be entitled to inspect the document, if it were not in the possession of the President, to inspect the document at any reasonable time.

Consultation

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

- (a) the mental health professionals 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 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 an 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 at that facility or by that person in accordance with the proposed order.

Form of orders

104. An order of the Tribunal—

- (a) shall be in writing signed by the members constituting the Tribunal when the order is made; and
- (b) shall specify the persons on whom a copy of the order is to be served.

Service of orders

105. The Registrar shall serve a copy of an order of the Tribunal on—

- (a) the person in respect of whom the order is made;
- (b) the representative of that person (if any);
- (c) the Community Advocate;
- (d) if the order is made in respect of a person referred to the Tribunal under section 15—the referring officer;
- (e) if the order is made in respect of a person ordered to submit to the jurisdiction of the Tribunal by a court—that court;

- (f) if the order specifies a facility or an institution to which a person is to be admitted—the person in charge of that facility or institution; and
- (g) any other person who is specified in the order under paragraph 104 (b).

Proof of orders

106. A copy of an order signed in accordance with paragraph 104 (a) is admissible as evidence in any proceedings that such an order was made.

Breach of orders

107. (1) Where the Tribunal has reasonable grounds for believing that a person is in breach of an order made by the Tribunal, the President may—

- (a) summon the person to appear before the Tribunal at the time and place specified in the summons; or
- (b) if satisfied that the person is unlikely to appear in response to a summons—issue a warrant for the apprehension of the person.

(2) Subsection 90 (5) applies in relation to a summons issued under paragraph (1) (a) as if it had been issued under subsection 90 (1).

(3) Subsections 92 (2), (3) and (4) apply in relation to a warrant issued under paragraph (1) (b) as if it had been issued under subsection 92 (1).

(4) In subsection (1)—

“order” includes a condition imposed under subsection 72 (4).

Obtaining reasons for decisions

108. (1) Where—

- (a) the Tribunal makes a decision; and
- (b) a person who is entitled to appeal to the Supreme Court against the decision requests the President, in accordance with subsection (3), for a statement of reasons in respect of the decision;

the President shall give a written statement of those reasons to the person as soon as practicable but, in any case, within 28 days after the day on which the request is received by the President.

(2) A request for a statement of reasons shall be in writing given to the President within 28 days after the day on which the decision was made.

(3) A statement of reasons shall—

- (a) set out the Tribunal’s findings on material questions of fact;
- (b) refer to the evidence or other material on which those findings were made; and
- (c) give the Tribunal’s reasons for the decision.

Withdrawal of applications

109. An applicant is entitled to withdraw the application made by him or her at any time before it is determined.

Costs

110. (1) Where the Tribunal is satisfied that—

- (a) an application is frivolous, vexatious or has not been made in good faith; and
- (b) a person other than the applicant has reasonably incurred expenses in relation to the proceeding in respect of the application;

the Tribunal may order the applicant to pay a specified amount to that person by way of compensation.

(2) The amount specified in the order is a debt due to the person by the applicant.

Contempt of Tribunal

111. A person shall not—

- (a) obstruct or hinder the Tribunal or a member of the Tribunal in the performance of the functions of the Tribunal; or
- (b) disrupt a proceeding.

Penalty: \$5,000 or imprisonment for 6 months, or both.

PART X—DIRECTOR OF MENTAL HEALTH AND MENTAL HEALTH OFFICERS

Director

112. The Minister shall, by instrument, appoint a Director of Mental Health Services.

Functions

113. The Director has the following functions:

- (a) to provide treatment, care, rehabilitation and protection for persons who have a psychiatric illness;
- (b) to rationalise and co-ordinate mental health services and to promote the establishment of community-based mental health services for the purpose of enabling, whenever possible, the treatment of persons who have a psychiatric illness otherwise than in an institution;
- (c) to promote research into psychiatric illness;
- (d) to assist in the training and education of persons who have a psychiatric illness;

- (e) to consult with voluntary agencies and self-help, ethnic and other appropriate groups to ensure the provision of appropriate mental health services;
- (f) to make reports and recommendations to the Minister with respect to matters affecting the provision of treatment, care, control, accommodation, maintenance and protection for persons who have a psychiatric illness;
- (g) to promote informed public opinion on matters of mental health by publishing reports and information concerning mental health and to promote public understanding of and involvement in measures for the prevention and treatment of psychiatric illness and the treatment, care, control, rehabilitation and protection of persons who have a psychiatric illness.

Terms of appointment

114. (1) Subject to this Act, the Director holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for re-appointment.

(2) The Director holds office on such terms and conditions (if any) with respect to matters not provided for by this Act as the Minister determines.

(3) A person is not eligible for appointment as the Director unless he or she is a psychiatrist.

Resignation

115. The Director may resign in writing given to the Minister.

Termination of appointment

116. (1) The Minister may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of the Director if the Director ceases to be eligible to hold the office of Director.

Acting appointments

117. (1) The Minister may appoint a person who is eligible to be appointed as the Director to act as the Director—

- (a) during a vacancy in the office of Director, whether or not an appointment has been previously made to the office; or
- (b) during any period, or during all periods, when the Director is or is expected to be absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act as Director is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Delegation

118. The Director may, with the approval of the Minister, delegate by instrument any of his or her powers to a psychiatrist who is a public servant or is engaged by the Territory.

Mental Health Officers

119. (1) The Minister may, by instrument, appoint persons to be Mental Health Officers for the purposes of this Act.

(2) The Minister shall not appoint a person to be a Mental Health Officer unless satisfied that the person is a mental health nurse, psychologist or social worker.

(3) A Mental Health Officer shall perform such duties for the purposes of this Act as the Director directs.

Annual report

120. (1) The Director shall, after each financial year, furnish to the Minister for presentation to the Legislative Assembly a report relating to the operations of the Director's office during that year.

(2) A report shall include—

- (a) statistics in relation to persons who have a psychiatric illness; and
- (b) details of any arrangements with the State of New South Wales in respect of such persons.

PART XI—MENTAL HEALTH COUNCIL

Appointment

121. (1) The Minister may appoint 1 or more persons as the Mental Health Council.

(2) A member of the Council holds office on such terms and conditions as are specified in the instrument of appointment.

Functions

- 122.** The Council has the following functions:
- (a) to advise the Minister with respect to the following:
 - (i) the prevention of mental dysfunction;
 - (ii) the rehabilitation of persons who are or have been mentally dysfunctional;
 - (iii) the fostering of community involvement in the provision of services and facilities for mentally dysfunctional persons;
 - (iv) the provision of continuing care for mentally dysfunctional persons;
 - (v) such other matters relating to mental health as the Minister requests;
 - (b) to consider, and keep under review, the provision of services and facilities for mentally dysfunctional persons.

PART XII—PRIVATE PSYCHIATRIC INSTITUTIONS*Division 1—Interpretation***Interpretation**

- 123.** In this Part—
- “licence” means a licence issued under this Part;
 - “licensed premises” means the premises at which a psychiatric institution is, or is proposed to be, conducted and in respect of which a licence is issued;
 - “licensee” means a person to whom a licence is issued under this Part;
 - “psychiatric institution” means a hospital or other institution providing treatment, care, rehabilitation or accommodation for persons who have a psychiatric illness or are addicted to alcohol or another drug, other than—
 - (a) a recognised hospital within the meaning of the *Health Insurance Act 1973* of the Commonwealth; or
 - (b) an institution conducted by the Territory.

*Division 2—Licences***Owner or manager to be licensed**

124. A person shall not conduct a psychiatric institution on his or her own behalf, or on behalf of another person, without a licence.

Penalty: \$5,000 or imprisonment for 6 months, or both.

Issue of licence

125. (1) The Minister may, on application, issue a licence to a person in respect of the premises specified in the licence.

(2) An application shall be in writing and shall be lodged with the Minister together with the determined fee.

(3) The Minister shall not issue a licence unless satisfied that the applicant is a fit and proper person to hold a licence and that—

- (a) the structural and sanitary condition and the location of the premises in respect of which the application is made are satisfactory, having regard to the interests of the persons who will receive treatment or reside at the premises;
- (b) the facilities in case of fire or flood at those premises are adequate;
- (c) the cooking and ablution facilities at those premises are adequate; and
- (d) the accommodation provided for patients, residents and members of staff at those premises are adequate.

(4) A licence shall be issued subject to conditions as to—

- (a) the maximum number of persons for whom treatment, care, rehabilitation or accommodation may be provided at the licensed premises; and
- (b) the classes of persons for whom treatment, care, rehabilitation or accommodation may be provided at the licensed premises.

(5) A licence may be issued subject to such other conditions (if any) as the Minister thinks necessary, including but not limited to conditions as to any of the following:

- (a) the minimum number of staff to be employed at the licensed premises;
- (b) the qualifications of the staff;
- (c) the treatment that may be provided at the licensed premises;
- (d) the measures to be taken to ensure the health and safety of patients, residents and members of staff on the licensed premises;
- (e) the insurance to be carried by the licensee against any liability arising from the conduct of a psychiatric institution on the licensed premises;
- (f) the recreational and educational facilities to be provided at the licensed premises for patients and residents;
- (g) the management of the licensed premises.

Term and renewal of licence

126. (1) A licence remains in force for the period of 12 months commencing on the day on which the licence is issued and may be renewed in accordance with this section.

(2) A licensee may, at any time before the expiration of the period referred to in subsection (1) or the last period of renewal, as the case may be, apply to the Minister for a renewal of the licence.

(3) An application shall be in writing and shall be lodged with the Minister together with the determined fee.

(4) If the Minister is satisfied of the matters referred to in subsection 125 (3), the Minister shall renew the licence for a further period of 12 months commencing on the expiration of the period referred to in subsection (1) or the last period of renewal, as the case requires.

Variation and revocation of conditions

127. (1) On application in writing by the licensee and if satisfied that it is in the best interests of the patients and residents at the licensed premises, the Minister may—

- (a) vary a condition imposed under subsection 125 (4) or (5) in the manner specified in the application;
- (b) revoke a condition imposed under subsection 125 (5); or
- (c) impose a condition specified in the application.

(2) If satisfied that it is in the best interests of the patients and residents at the licensed premises—

- (a) to vary a condition imposed under subsection 125 (4) or (5);
- (b) to revoke a condition imposed under subsection 125 (5); or
- (c) to impose a condition;

the Minister may, by notice in writing served on the licensee, require the licensee, within 28 days after the date of the notice, to show cause why that condition should not be varied in the manner specified in the notice or should not be revoked or imposed.

(3) The Minister may, after the expiration of 28 days after the date of the notice, vary in the manner specified in the notice, or revoke or impose, the condition specified in the notice.

(4) A decision of the Minister under subsection (1) or (3) takes effect on the day after the day on which the notice under subsection 137 (1) is given to the licensee or on such later day as may be specified in that notice.

Surrender of licence

128. (1) A licensee may surrender the licence by notice in writing signed by the licensee and lodged with the Minister together with the licence.

(2) A surrender takes effect on the date of the notice or on such later day as may be specified in the notice.

Cancellation of licence

129. (1) If satisfied that a licensee has failed to comply with a condition of the licence, the Minister may, by notice in writing served on the licensee, require the licensee, within 28 days after the date of the notice, to show cause why the licence should not be cancelled.

(2) The Minister may, after the expiration of 28 days after the date of the notice, cancel the licence.

(3) The cancellation of a licence under this section takes effect on the day after the day on which the notice under subsection 137 (1) is given to the licensee or on such later day as may be specified in that notice.

Emergency cancellation

130. (1) Despite section 129, if satisfied that circumstances exist in relation to licensed premises that give rise to an immediate risk of danger to the health or safety of patients or residents on the licensed premises, the Minister may, by notice in writing served on the licensee, cancel the licence.

(2) A notice under subsection (1) shall set out—

- (a) the terms of the decision;
- (b) the findings on material questions of fact, referring to the evidence or other material on which those findings were made; and
- (c) the reasons for the decision.

(3) The cancellation of a licence under this section takes effect on the day after the day on which the notice is served on the licensee.

(4) Where a licence is cancelled under subsection (1), the former licensee may apply for restoration of the licence on the ground that, because of a specified change in the circumstances referred to in subsection (1) that has occurred since the date of cancellation, the licence should be restored.

(5) The Minister may restore the licence if satisfied that, because of the change specified in the application, it should be restored.

Effect of cancellation

131. Where a licence is cancelled under section 129 or 130, the former licensee shall not—

- (a) admit any person for treatment, care, rehabilitation or accommodation at the premises to which the licence related on or after the day on which the cancellation takes effect; or

- (b) permit treatment, care, rehabilitation or accommodation to be provided on those premises after the expiration of 1 month after that day.

Penalty: \$5,000 or imprisonment for 6 months, or both.

Division 3—Inspectors

Appointment

132. (1) The Minister may, by instrument, appoint persons to be inspectors for the purposes of this Part.

(2) An inspector shall perform such duties for the purposes of this Part as the Director directs.

Identity cards

133. (1) The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

(2) A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister on ceasing to be an inspector.

Penalty for contravention of subsection (2): \$100.

Powers of inspection

134. (1) An inspector may, at any time of the day, enter any licensed premises and—

- (a) inspect the premises and any equipment used at the premises in connection with the treatment, care, rehabilitation or accommodation of patients or residents;
- (b) inspect any books, documents or other records that are in the possession of the occupier of the premises, or to which the occupier has access, relating to the conduct of the psychiatric institution at those premises; and
- (c) require the occupier of the premises to furnish the inspector with any information, books, documents or other records that are in the possession of the occupier, or to which the occupier has access, relating to the conduct of the psychiatric institution at those premises.

(2) An inspector who enters premises under subsection (1) is not authorised to remain on the premises if, when requested to do so by the occupier of the premises, the inspector does not show his or her identity card to the occupier.

(3) A person is not required to furnish material to an inspector under paragraph (1) (c) if, when requested to do so by the person, the inspector does not show his or her identity card to the person.

(4) Where an inspector enters premises under subsection (1), a reference in this section to the occupier of the premises shall include a reference to a person the inspector believes on reasonable grounds to be the occupier, or the person in charge, of those premises.

Obstruction of inspectors

135. A person shall not, without reasonable excuse—

- (a) obstruct or hinder an inspector acting under section 134; or
- (b) fail to comply with a requirement to furnish material under paragraph 134 (1) (c).

Penalty: \$5,000 or imprisonment for 6 months, or both.

Division 4—Review of decisions

Application for review

136. Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister—

- (a) refusing to issue a licence under subsection 125 (1);
- (b) refusing to renew a licence under subsection 126 (4);
- (c) refusing to vary a condition under paragraph 127 (1) (a);
- (d) refusing to revoke a condition under paragraph 127 (1) (b);
- (e) refusing to impose a condition under paragraph 127 (1) (c);
- (f) varying a condition under subsection 127 (3);
- (g) revoking a condition under subsection 127 (3);
- (h) imposing a condition under subsection 127 (3);
- (j) cancelling a licence under subsection 129 (2); or
- (k) refusing to restore a licence under subsection 130 (5).

Notice of decision

137. (1) Where the Minister makes a decision of a kind referred to in section 136, the Minister shall, within 28 days after the date of the decision, give notice in writing of the decision to the licensee or former licensee, as the case may be.

(2) A notice under subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement under section 26 of that Act.

(3) The validity of a decision referred to in subsection (1) is not to be taken to be affected by a failure to comply with subsection (2).

Division 5—Miscellaneous

Unauthorised treatment

138. A licensee is guilty of an offence if the licensee allows treatment for psychiatric illness to be given to a person at the licensed premises after the licensee receives notice that the person is the subject of an order of the Tribunal that does not authorise the giving of that treatment to that person at the psychiatric institution conducted at those premises.

Penalty: \$5,000 or imprisonment for 6 months, or both.

Service of documents

139. Where a document is required to be served on a person under this Part, in addition to the modes of service authorised under section 17A of the *Interpretation Act 1967*, the document may be served on the person by leaving it at the last-known place of residence or business of the person with a person apparently over the age of 16 years and apparently resident or employed at that place.

PART XIII—MISCELLANEOUS

Legal effect of certain sections

140. Nothing in section 7 or 8 is to be taken to create any legal rights not in existence before the enactment of that section or to affect any legal rights in existence before that enactment or that would, but for that section, have come into existence after that enactment.

Appeals from decisions of Tribunal

141. (1) An appeal to the Supreme Court from a decision of the Tribunal may be brought by—

- (a) a person in respect of whom the decision was made;
- (b) a person who appeared, or was entitled to appear under subsection 89 (1), before the Tribunal at the proceeding in which the decision was made;
- (c) the Discrimination Commissioner; or
- (d) any other person with the leave of the Court.

(2) An appeal may be brought as of right.

(3) An appeal may be instituted in accordance with the Supreme Court Rules—

- (a) within 28 days after the day on which the decision was made;

- (b) if the appellant requested a statement of reasons under section 108 in respect of the decision—within 28 days after the day on which the appellant receives the statement; or
 - (c) within such further time as the Supreme Court (whether before or after the expiration of the period referred to in paragraph (a) or (b)) allows.
- (4) The Supreme Court shall hear and determine the appeal and may make such orders as are just, including an order—
- (a) confirming the decision;
 - (b) setting the decision aside and remitting the matter to the Tribunal with directions; or
 - (c) substituting its own decision.
- (5) Subsections 214 (3) and (4) of the *Magistrates Court Act 1930* apply in relation to an appeal under this section as if it were an appeal referred to in subsection 214 (1) of that Act.

Relationship with *Guardianship and Management of Property Act 1991*

142. (1) Despite anything in the *Guardianship and Management of Property Act 1991* or the order appointing the guardian, a guardian appointed for a person under that Act is not entitled to give for the person any consent required by this Act.

(2) Despite section 70 of the *Guardianship and Management of Property Act 1991*, the Guardianship and Management of Property Tribunal is not entitled to make an order in respect of any consent required by this Act.

Relationship with *Powers of Attorney Act 1956*

143. Despite anything in the *Powers of Attorney Act 1956* or in the instrument creating the power of attorney, an attorney of a person appointed by virtue of a power of attorney under that Act is not entitled to give for the person any consent required by this Act.

Relationship with *Mental Health Act 1962*

144. (1) A doctor is not entitled to give a certificate in respect of a person for the purposes of the *Mental Health Act 1962* without the consent of the Tribunal.

(2) An application for the consent of the Tribunal shall be made in writing by the doctor proposing to give the certificate and shall be accompanied by a statutory declaration setting out detailed reasons as to why the doctor believes the certificate should be given.

(3) Divisions 2 and 3 of Part IV (other than section 36) and Division 2 of Part IX apply to the Tribunal in giving consent under this section as if the Tribunal were making a mental health order.

Certain rights unaffected

145. Nothing in this Act shall be taken as preventing a person in respect of whom an order of the Tribunal is not in force—

- (a) refusing to receive particular treatment or care at a mental health facility; or
- (b) discharging himself or herself from such a facility.

Determined fees

146. The Minister may, by notice in the *Gazette*, determine fees for the purposes of this Act.

Regulations

147. The Executive may make regulations for the purposes of this Act.

[Presentation speech made in Assembly on 16 June 1994]