



AUSTRALIAN CAPITAL TERRITORY

## **Mental Health (Treatment and Care) (Amendment) Act 1997**

**No. 104 of 1997**

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### **An Act to amend the *Mental Health (Treatment and Care) Act 1994***

*[Notified in ACT Gazette S420: 24 December 1997]*

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

#### **Short title**

**1.** This Act may be cited as the *Mental Health (Treatment and Care) (Amendment) Act 1997*.

#### **Commencement**

**2.** This Act commences on the day on which it is notified in the *Gazette*.

#### **Principal Act**

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

**Insertion**

4. After Part V of the Principal Act the following Part is inserted:

**“PART VA—INTERSTATE APPLICATION OF MENTAL HEALTH LAWS**

*“Division 1—Preliminary*

**Object of Part**

“48A. The object of this Part is to provide for—

- (a) the interstate transfer of patients under mental health legislation;
- (b) the interstate recognition of documents that authorise the detention of persons under mental health legislation;
- (c) the treatment in the Territory of persons subject to mental health orders or similar orders made in other States; and
- (d) the apprehension of persons subject to certain interstate warrants or orders, or otherwise liable to apprehension, under mental health legislation.

**Interpretation**

“48B. In this Part—

‘agreement’ means an agreement made under section 48C;

‘corresponding law’ means a law of another State which is declared to be a corresponding law under subsection 48D (1);

‘custodial order’ means a mental health order of the kind referred to in paragraph 27 (2) (a);

‘interstate custodial patient’ means a person who is declared to be an interstate custodial patient under subsection 48D (2);

‘interstate non-custodial order’ means an order which is declared to be an interstate non-custodial order under subsection 48D (4);

‘non-custodial order’ means a mental health order other than a custodial order;

‘State’ includes Territory.

### **Authority to enter into agreements**

“48C. (1) The Minister may enter into an agreement with a Minister of another State for or with respect to the application of mental health laws of the Territory or the other State, the transfer, detention and apprehension of persons in the Territory and the other State under mental health laws and administrative matters and other matters ancillary to, or consequential on, any of those matters or other matters contained in this Part.

“(2) Nothing in this section limits the power of the Minister to enter into any agreement relating to mental health laws.

### **Recognition of interstate laws and orders**

“48D. (1) The regulations may declare that a specified law of another State relating to mental health is a corresponding law for the purposes of this Part.

“(2) The regulations may declare that a specified class of persons, being persons who under a corresponding law are required to be detained at a hospital or other facility or in the custody of a person, are interstate custodial patients for the purposes of this Part.

“(3) The regulations may declare that a class of interstate custodial patients corresponds to one of the following:

- (a) persons being detained under section 38, with the detention having commenced at a specified time;
- (b) persons being detained under section 41, with the detention having commenced at a specified time;
- (c) persons subject to a specified custody order that was made at a specified time.

“(4) The regulations may declare that a specified class of orders made under a corresponding law, being orders which require the treatment of a person but not the holding of the person in custody, are interstate non-custodial orders for the purposes of this Part.

### **Officers of the Territory may exercise functions under corresponding laws**

“48E. Subject to any agreement under section 48C, a person authorised by the Minister for the purposes of this section may exercise any function conferred on him or her by or under a corresponding law or an agreement under section 48C.

***“Division 2—Transfer of persons from the Territory***

**Emergency admission of persons to health facilities in other States**

“48F. (1) A person who may be apprehended and detained at an approved health facility under section 37 may be taken to a health facility in another State for detention instead, if this is permitted by or under a corresponding law of the other State.

“(2) A person may be taken to a health facility in another State under this section by—

- (a) a person who is authorised by this Act to apprehend the person and deliver him or her to an approved health facility, if this is permitted by or under the law of the other State; or
- (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.

“(3) The regulations may provide for or with respect to—

- (a) the handing over of custody of a person referred to in subsection (1) by persons in the Territory;
- (b) the persons (including interstate persons) who may take such a person to a health facility in another State under this section; and
- (c) the health facilities to which a person may be taken under this section.

**Transfer of custodial patients from the Territory**

“48G. (1) A person who—

- (a) is being detained at an approved health facility or an approved mental health facility under section 38 or 41; or
- (b) is subject to a custodial order;

may be transferred to a health facility in another State, if the transfer is permitted by or under a provision of a corresponding law of the other State and is in accordance with the regulations.

“(2) A person may be taken to a health facility in another State under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.

“(3) The regulations may provide for or with respect to—

- (a) procedures for authorising the transfer of a person under this section and for notifying any such transfer or proposed transfer;
- (b) criteria for authorising the transfer of a person under this section;

- (c) the handing over of custody of such a person by persons in the Territory;
- (d) the persons (including interstate persons) who may take a person to a health facility in another State under this section; and
- (e) the health facilities to which a patient may be taken under this section.

### **Application of Act to persons transferred interstate**

“48H. (1) Subject to the regulations, this Act ceases to apply to a person who is accepted into the custody of a responsible person at a health facility in another State under section 48F or 48G.

“(2) Where an agreement under section 48C allows it, the regulations may provide for provisions of this Act to continue to apply in specified circumstances to a person after the person is accepted into the custody referred to in subsection (1).

### ***“Division 3—Transfer of persons to the Territory***

### **Emergency admission of interstate persons to approved health facilities**

“48I. (1) A person who may be taken to and detained in a hospital or other facility in another State under a corresponding law of that State may instead be taken to and detained in an approved health facility in the Territory.

“(2) A person may be taken to an approved health facility in the Territory under this section by—

- (a) a person who is authorised under section 37 to apprehend a person and take the person to an approved health facility, if this is permitted by or under a law of the other State; or
- (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.

“(3) The regulations may provide for or with respect to—

- (a) the handing over of custody of a person referred to in subsection (1) to persons in the Territory;
- (b) the persons (including interstate persons) who may take such a person to an approved health facility in the Territory under this section; and
- (c) the health facilities to which a person may be taken under this section.

**Application of Act to persons detained under section 48I**

“48J. This Act applies to a person who is taken to and detained in an approved health facility under section 48I as if it had been done under section 37.

**Transfer of interstate custodial patients to health facilities in the Territory**

“48K. (1) An interstate custodial patient may be transferred to an approved health facility or an approved mental health facility in the Territory, if the transfer is authorised under a provision of a corresponding law of the other State and accepted by the person in charge of the facility.

“(2) An interstate custodial patient may be taken to a facility in the Territory under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.

“(3) The person in charge of an approved health facility or an approved mental health facility shall not accept the transfer of an interstate custodial patient to the facility unless the person in charge is satisfied that the patient could reasonably be detained under this Act.

“(4) The regulations may provide for or with respect to—

- (a) the procedures for authorising and arranging the receipt of a person under this section;
- (b) the persons (including interstate persons) who may take a person to a facility in the Territory under this section;
- (c) the receiving of custody of such a person by persons in the Territory; and
- (d) the period within which such a person must be reviewed by the Tribunal after being transferred to a facility in the Territory.

**Application of Act to persons transferred to the Territory under section 48K**

“48L. An interstate custodial patient who is transferred to an approved health facility or an approved mental health facility under section 48K is subject to this Act—

- (a) where no regulation has been made under subsection 48D (3) that applies to the patient—as if the patient had been first detained at the facility in accordance with section 38 at the time of admission to the facility;

- (b) where a regulation made under paragraph 48D (3) (a) applies to the patient—as if the patient had been first detained at the facility in accordance with section 38 at the time specified in the regulation;
- (c) where a regulation made under paragraph 48D (3) (b) applies to the patient—as if the patient had been first detained at the facility in accordance with section 41 at the time specified in the regulation; or
- (d) where a regulation made under paragraph 48D (3) (c) applies to the patient—as if the patient were subject to the custodial order specified in the regulation.

***“Division 4—Non-custodial orders and interstate non-custodial orders***

**Non-custodial orders relating to interstate persons**

“48M. A non-custodial order may be made under Division 3 of Part IV even though the affected person does not reside in the Territory, if—

- (a) the agencies responsible for implementing the order are located in the Territory; or
- (b) the order is allowed under an agreement under section 48C with the State where the person resides.

**Orders relating to Territory residents**

“48N. (1) Where a person (in this section called the ‘patient’) is subject to an interstate non-custodial order, persons who are authorised under the corresponding law of the State concerned to implement the order may treat the patient in the Territory and perform other functions in the Territory for the purpose of implementing the order.

“(2) The regulations may provide for or with respect to—

- (a) limiting the persons who may act under this section; and
- (b) limiting the treatment that may be given or functions that may be performed under this section.

***“Division 5—Apprehension of persons absent from custody or in breach of orders***

**Recognition of apprehension orders**

“48P. A warrant, order or other document issued under a corresponding law, being a document which authorises the apprehension of a person, is recognised in the Territory if the conditions for recognition set out in the regulations are met.

**Apprehension of interstate persons absent without leave or in breach of orders**

“48Q. (1) Where a person—

- (a) is the subject of a warrant, order or other document recognised in the Territory under section 48P; or
- (b) is otherwise liable to be apprehended, under a provision of a corresponding law under which the person may be apprehended and taken to a health facility;

the person may be apprehended at any time—

- (c) by a police officer; or
- (d) by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.

“(2) A person who has been apprehended under this section may be—

- (a) conveyed to and detained in an approved health facility in the Territory; or
- (b) where it is permitted by a corresponding law of the other State concerned—conveyed to that State and there dealt with in accordance with the corresponding law.

“(3) This Act applies to a person conveyed to and detained in an approved health facility under paragraph (2) (a) as if the person were first detained at the facility in accordance with section 41 at the time of admission to the facility.

**Regulations relating to apprehension of persons**

“48R. The regulations may provide for or with respect to—

- (a) the kinds of warrants, orders or other documents that may be recognised in the Territory for the purposes of this Part;
- (b) the conditions (if any) to be met before a warrant, order or other document can be recognised in the Territory;



*Mental Health (Treatment and Care) (Amendment) No. 104, 1997*

- (c) the circumstances when a person is taken to be liable to be apprehended under a corresponding law;
- (d) the persons (including interstate persons) who may apprehend a person under this section;
- (e) the health facilities and places to which a person can be taken under this Part (whether in the Territory or another State); and
- (f) the actions (including transfer to the other State) that may be taken in respect of a person detained under this Part.”.

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**NOTE**

**Principal Act**

1. Act No. 44, 1994. See also Act No. 25, 1995; No. 35, 1996.

*[Presentation speech made in Assembly on 6 November 1997]*

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