



Australian Capital Territory

Mental Health (Treatment and Care) Amendment Act 2004

A2004-44

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Definitions for Act	
Section 4, definition of <i>care coordinator</i>	2
5 Section 4, definition of <i>community care order</i>	2
6 Section 4, definition of <i>mental health order</i>	2
7 Section 4, definition of <i>psychiatric treatment order</i>	3
8 Section 4, definition of <i>restriction order</i>	3
9 Orders for assessment	
Section 16 (1) (b)	3
10 Determination of ability to consent	
Section 16A	3
11 Divisions 4.3 and 4.4	4
12 Approved facilities	
Section 48 (1) (a)	23

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Contents

		Page
13	Section 48 (1) (b)	23
14	Definitions for pt 5A Section 48B, definition of <i>custodial order</i>	23
15	Meaning of responsible person Section 49, definition of <i>responsible person</i> , paragraph (c)	24
16	Statement of rights Section 50 (1)	24
17	Information to be provided Section 51	24
18	New section 51 (d) (va)	24
19	Section 51 (d)	25
20	Communication Section 52	25
21	Restriction on use Section 55 (2) and (3)	25
22	Duration of appointment Section 81 (3) (f)	25
23	Constitution for exercise of powers Section 83 (2) (b)	26
24	Notice of proceedings New section 94 (ga)	26
25	Section 94	26
26	Service of orders New section 105 (fa) and (fb)	26
27	Section 105	26
28	New part 10A	27
29	Sections 142 and 143	29



Australian Capital Territory

Mental Health (Treatment and Care) Amendment Act 2004

A2004-44

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

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

1 Name of Act

This Act is the *Mental Health (Treatment and Care) Amendment Act 2004*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Mental Health (Treatment and Care) Act 1994*.

4 Definitions for Act
Section 4, definition of *care coordinator*

substitute

care coordinator means the care coordinator appointed under section 120A.

5 Section 4, definition of *community care order*

substitute

community care order means an order made under section 36.

6 Section 4, definition of *mental health order*

substitute

mental health order means a psychiatric treatment order, a community care order or a restriction order.

7 Section 4, definition of *psychiatric treatment order*

substitute

psychiatric treatment order means an order made under section 28.

8 Section 4, definition of *restriction order*

substitute

restriction order means an order made under section 30 or section 36B.

**9 Orders for assessment
Section 16 (1) (b)**

omit

section 36

substitute

section 36L

**10 Determination of ability to consent
Section 16A**

after

psychiatric

insert

or other

11 Divisions 4.3 and 4.4

substitute

Division 4.3 Making of orders—preliminary matters

23 Tribunal must consider assessment

Before making a mental health order in relation to a person, the tribunal must consider—

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

24 Tribunal must hold inquiry

Before making a mental health order in relation to a person, the tribunal must hold an inquiry into the matter.

25 Consultation by tribunal etc

- (1) Before making a mental health order in relation to a person, the tribunal must, as far as practicable, consult—
 - (a) if the person is a child—the people with parental responsibility for the child under the C&YP Act; and
 - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
 - (c) the person most likely to be responsible for providing the treatment, programs and other services proposed to be ordered.
- (2) If the person has an attorney appointed under the *Powers of Attorney Act 1956*, the tribunal must also consider consulting the attorney.

-
- (3) Before making a mental health order for the provision of a particular treatment, program or other service (including an assessment) at a stated facility or by a stated person, the tribunal must be satisfied that the treatment, program or service can be provided or performed at that facility or by that person.

26 What tribunal must take into account

In making a mental health order in relation to a person, the tribunal must take into account the following:

- (a) whether the person consents, refuses to consent or has the capacity to consent, to a proposed course of treatment, care or support;
- (b) the views and wishes of the person, so far as they can be found out;
- (c) the views and wishes of the people responsible for the day-to-day care of the person, so far as those views and wishes are made known to the tribunal;
- (d) the views of the people appearing at the proceeding;
- (e) the views of the people consulted under section 25;
- (f) that the person's welfare and interests should be appropriately protected;
- (g) that the person's rights should not be interfered with except to the least extent necessary;
- (h) that the person should be encouraged to look after himself or herself;
- (i) 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, including—
 - (i) the purposes of those treatments, programs and services; and
 - (ii) the benefits likely to be derived by the person from those treatments, programs and services; and
 - (iii) the distress, discomfort, risks, side effects or other disadvantages associated with those treatments, programs and services;
- (l) any relevant medical history of the person;
- (m) the religious, cultural and language needs of the person;
- (n) for a person referred to the tribunal under section 15 or a mentally ill or mentally dysfunctional offender—the nature and circumstances of the offence in relation to which the person has been arrested, or may be or has been charged;
- (o) for a mentally ill or mentally dysfunctional offender—the nature and extent of the person’s mental illness or mental dysfunction, including the effect it is likely to have on the person’s behaviour in the future;
- (p) for a mentally ill or 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 likely to do serious harm to others;
- (q) anything else prescribed under the regulations for this section.

27 Tribunal may not order particular drugs etc

The tribunal may not make an order for the administration of a particular drug or about the way a particular clinical procedure is to be carried out.

Division 4.4 Psychiatric treatment orders**28 Criteria for making psychiatric treatment order**

The tribunal may make a psychiatric treatment order in relation to a person if—

- (a) the person has a mental illness; and
- (b) the tribunal has reasonable grounds for believing that, because of the illness, the person is likely to—
 - (i) do serious harm to himself, herself or someone else; or
 - (ii) suffer serious mental or physical deterioration;unless subject to involuntary psychiatric treatment; and
- (c) the tribunal is satisfied that psychiatric treatment is likely to reduce the harm or deterioration (or the likelihood of harm or deterioration) mentioned in paragraph (b) and result in an improvement in the person's psychiatric condition; and
- (d) the treatment cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

29 Content of psychiatric treatment order

- (1) A psychiatric treatment order made in relation to a person may state 1 or more of the following:
 - (a) a health facility to which the person may be taken;

- (b) that the person must do either or both of the following:
 - (i) undergo psychiatric treatment, other than convulsive therapy or psychiatric surgery;
 - (ii) undertake a counselling, training, therapeutic or rehabilitation program;
 - (c) that limits may be imposed on communication between the person and other people.
- (2) A psychiatric treatment order may not include any requirement mentioned in section 31 (Content of restriction order).
- (3) A psychiatric treatment order made in relation to a person must include a statement that the person—
- (a) has the capacity to consent to the order, and consents; or
 - (b) has the capacity to consent to the order, but refuses to do so; or
 - (c) does not have the capacity to consent to the order.

30 Criteria for making restriction order

In addition to making a psychiatric treatment order in relation to a person, the tribunal may make a restriction order in relation to the person if satisfied that it is in the interests of the person's health or safety or public safety to do so.

31 Content of restriction order

A restriction order made under section 30 in relation to a person may state either or both of the following:

- (a) that the person must—
 - (i) live (but not be detained) at a stated place; or
 - (ii) be detained at a stated place;

- (b) that the person must not approach a stated person or stated place or undertake stated activities.

32 Role of chief psychiatrist

- (1) The chief psychiatrist is responsible for the treatment and care of a person to whom a psychiatric treatment order applies.
 - (2) Within 5 working days after the day the order is made, the chief psychiatrist must determine, in writing—
 - (a) the times when and the place where the person is required to attend to receive treatment, care or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the order; and
 - (b) the nature of the psychiatric treatment to be given to the person.
- Note* If a form is approved under s 146A for a determination, the form must be used.
- (3) The chief psychiatrist must also determine, in writing, the place where the person must live if—
 - (a) the tribunal has not made a restriction order requiring the person to live at a stated place; and
 - (b) the chief psychiatrist considers that the person should live at a place other than the place where the person usually lives.
 - (4) Before making a determination, the chief psychiatrist must, if practicable, consult—
 - (a) the person; and
 - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
 - (c) if the person has an attorney appointed under the *Powers of Attorney Act 1956*—the attorney.

- (5) For subsection (2) (b), the chief psychiatrist must not determine treatment that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment.
- (6) As soon as practicable after making a determination, the chief psychiatrist must give a copy of the determination to the tribunal and the community advocate.
- (7) The chief psychiatrist may also give a copy of the determination to—
 - (a) any guardian consulted under subsection (4) (b); and
 - (d) any attorney consulted under subsection (4) (c).

33 Treatment to be explained

- (1) Before treatment is given to a person under a psychiatric treatment order, the chief psychiatrist must explain to the person the nature and effects (including any side effects) of the treatment.
- (2) The explanation must be given in the language or way of communicating that the person is most likely to understand.

34 Action if psychiatric treatment order no longer appropriate

- (1) This section applies if the chief psychiatrist is satisfied that—
 - (a) a person subject to a psychiatric treatment order is no longer a person in relation to whom the tribunal could make a psychiatric treatment order; or
 - (b) if the person is also subject to a restriction order—it is no longer necessary for the person to be subject to the restriction order.

-
- (2) The chief psychiatrist must tell the tribunal and the community advocate in writing.

Note The tribunal must review the order within 72 hours after being notified under this section (see s 36L (2)).

35 Powers in relation to detention, restraint etc

- (1) This section applies if a psychiatric treatment order has been made in relation to a person.
- (2) If the chief psychiatrist considers that it is necessary for the treatment and care of the person to detain the person at certain premises, the chief psychiatrist may—
- (a) take, or authorise someone else to take, the person to the premises and for that purpose—
 - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises stated by the chief psychiatrist; and
 - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter those premises using the force and assistance that is necessary and reasonable; and
 - (b) keep the person at the premises in the custody that the chief psychiatrist considers appropriate; and
 - (c) subject the person to the confinement or restraint that is necessary and reasonable—
 - (i) to prevent the person from causing harm to himself, herself or someone else; or
 - (ii) to ensure that the person remains in custody under the order; and

- (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself, herself or someone else.
- (3) In acting under this section, the chief psychiatrist must have regard to the matters stated in section 7 (Objectives of Act) and section 9 (Maintenance of freedom, dignity and self-respect).
- (4) If the chief psychiatrist subjects a person to involuntary restraint or seclusion, the chief psychiatrist must—
 - (a) enter in the person’s record the fact of and the reasons for the involuntary restraint or seclusion; and
 - (b) tell the community advocate in writing within 24 hours after the person is subjected to the involuntary restraint or seclusion; and
 - (c) keep a register of the involuntary restraint or seclusion.

Division 4.5 Community care orders

36 Criteria for making community care order

The tribunal may make a community care order in relation to a person if—

- (a) the person is mentally dysfunctional; and
- (b) the tribunal has reasonable grounds for believing that, because of the mental dysfunction, the person is likely to—
 - (i) do serious harm to himself, herself or someone else; or
 - (ii) suffer serious mental or physical deterioration;unless subject to involuntary treatment, care or support; and
- (c) the tribunal is satisfied that treatment, care or support is likely to reduce the harm, or the likelihood of harm, mentioned in paragraph (b); and

-
- (d) the tribunal is satisfied that, in the circumstances, a psychiatric treatment order should not be made; and
 - (e) the treatment, care or support cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

36A Content of community care order

- (1) A community care order made in relation to a person may state 1 or more of the following:
 - (a) that the person is to be given treatment, care or support;
 - (b) that the person may be given medication for the treatment or amelioration of the person's mental dysfunction that is prescribed by a doctor;
 - (c) that the person is to undertake a counselling, training, therapeutic or rehabilitation program;
 - (d) that limits may be imposed on communication between the person and other people.
- (2) A community care order may not include any requirement mentioned in section 36C (Content of restriction order).
- (3) A community care order made in relation to a person must include a statement that the person—
 - (a) has the capacity to consent to the order, and consents; or
 - (b) has the capacity to consent to the order, but refuses to do so; or
 - (c) does not have the capacity to consent to the order.

36B Criteria for making restriction order

In addition to making a community care order in relation to a person, the tribunal may make a restriction order in relation to the

person if satisfied that it is in the interests of the person's health or safety or public safety to do so.

36C Content of restriction order

A restriction order made under section 36B in relation to a person may state either or both of the following:

- (a) that the person must—
 - (i) live (but not be detained) at a stated community care facility or another stated place; or
 - (ii) be detained at a stated community care facility;
- (b) that the person must not approach a stated person or stated place or undertake stated activities.

36D Role of care coordinator

- (1) The care coordinator is responsible for coordinating the provision of treatment, care and support for a person to whom a community care order applies.
- (2) Within 5 working days after the day the order is made, the care coordinator must determine, in writing, the times when and the place where the person is required to attend to receive treatment, care or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the order.

Note If a form is approved under s 146A for a determination, the form must be used.

- (3) Before making a determination, the care coordinator—
 - (a) must consult—
 - (i) the tribunal; and
 - (ii) the community advocate; and

-
- (iii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
 - (b) if practicable, must consult—
 - (i) the person; and
 - (ii) if the person has an attorney appointed under the *Powers of Attorney Act 1956*—the attorney; and
 - (c) may consult any other service provider the care coordinator considers relevant.
- (4) After making a determination, the care coordinator must record whether the person was consulted and—
- (a) if the person was consulted—what the person’s views were; or
 - (b) if the person was not consulted—the reasons why.
- (5) As soon as practicable after making a determination, the care coordinator must give a copy of the determination to—
- (a) the tribunal; and
 - (b) the community advocate; and
 - (c) any guardian consulted under subsection (3) (a) (iii); and
 - (d) any attorney consulted under subsection (3) (b) (ii).
- (6) The care coordinator may also give a copy of the determination to—
- (a) anyone consulted under subsection (3) (c); and
 - (b) anyone providing treatment to the person.

36E Treatment to be explained

- (1) Before treatment is given to a person under a community care order, the care coordinator must ensure that the nature and effects (including any side effects) of the treatment are explained to the person.

- (2) The explanation must be given in the language or way of communicating that the person is most likely to understand.

36F Action if community care order no longer appropriate

- (1) This section applies if the care coordinator is satisfied that—
- (a) a person subject to a community care order is no longer a person in relation to whom the tribunal could make a community care order; or
 - (b) if the person is also subject to a restriction order—it is no longer necessary for the person to be subject to the restriction order.
- (2) The care coordinator must tell the tribunal and the community advocate in writing.

Note The tribunal must review the order within 72 hours after being notified under this section (see s 36L (2)).

36G Powers in relation to detention, restraint etc

- (1) Subsection (2) applies if a community care order has been made in relation to a person and—
- (a) a restriction order has also been made in relation to the person requiring the person to be detained at a community care facility; or
 - (b) the care coordinator requires the person to be detained at a community care facility under section 36K (Contravention of psychiatric treatment order or community care order).
- (2) The care coordinator may—
- (a) take, or authorise someone else to take, the person to the premises and, for that purpose—

-
- (i) use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises; and
 - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter those premises using the force and assistance that is necessary and reasonable; and
 - (b) keep the person at the premises in the custody that the tribunal considers appropriate; and
 - (c) subject the person to the confinement or restraint that is necessary and reasonable—
 - (i) to prevent the person from causing harm to himself, herself or someone else; or
 - (ii) to ensure that the person remains in custody under the order; and
 - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself, herself or someone else; and
- (3) If a community care order made in relation to a person authorises the giving of medication for the treatment or amelioration of the person's mental dysfunction, the care coordinator may—
- (a) approve the administration by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
 - (b) for that purpose, use (or authorise someone else to use) the force and assistance that is necessary and reasonable.
- (4) In acting under subsection (2) or (3), the care coordinator must have regard to the matters stated in section 7 (Objectives of Act) and section 9 (Maintenance of freedom, dignity and self-respect).

- (5) If the care coordinator subjects a person to involuntary restraint or seclusion, or the involuntary administration of medication prescribed by a doctor, the care coordinator must—
 - (a) enter in the person's record the fact of and the reasons for the involuntary restraint, seclusion or administration of medication; and
 - (b) tell the tribunal and the community advocate in writing within 24 hours after the person is subjected to the involuntary restraint, seclusion or administration of medication; and
 - (c) keep a register of the involuntary restraint, seclusion or administration of medication.

Division 4.6 Limits on communication

36H Limits on communication

- (1) This section applies if—
 - (a) a mental health order is made in relation to a person; and
 - (b) the tribunal orders that limits may be imposed on communication between the person and other people; and
 - (c) the relevant official has reasonable grounds for believing that it is necessary, in the interests of the effective treatment of the person, that communication between the person and other people be limited.
- (2) The relevant official may, subject to the order mentioned in subsection (1) (b), impose limits on communication by the person with other people that are necessary and reasonable to avoid prejudicing the effectiveness of the treatment.
- (3) As soon as practicable after imposing limits on communication by a person, the relevant official must explain to the person—
 - (a) the nature of the limits; and

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- (b) the period for which the limits will be in effect; and
 - (c) the reasons for imposing the limits.
- (4) The explanation must be given in the language or way of communicating that the person is most likely to understand
 - (5) Limits must not be imposed for a period longer than 7 days.
 - (6) Subsection (5) does not prevent further limits being imposed immediately after the limits previously imposed cease to have effect.
 - (7) This section has effect despite part 6 (Rights of mentally dysfunctional or mentally ill persons) but subject to section 36I.
 - (8) In this section:
 - relevant official*, in relation to a person subject to a mental health order, means—
 - (a) if the person is subject to a psychiatric treatment order—the chief psychiatrist; and
 - (b) if the person is subject to a community care order—the care coordinator.

36I Communication with community advocate and person's lawyer

- (1) The relevant official must ensure that, during any period of limited communication imposed on a person under section 36H, the person has—
 - (a) 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—the assistance necessary to enable the community advocate or the lawyer to have access to the person.

- (2) In this section:
relevant official—see section 36H (8).

Division 4.7 Duration, contravention and review of orders

36J Duration of orders

- (1) Unless sooner revoked—
- (a) a psychiatric treatment order or community care order has effect for—
 - (i) 6 months; or
 - (ii) if a shorter period is stated in the order—the shorter period; and
 - (b) a restriction order has effect for—
 - (i) 3 months; or
 - (ii) if a shorter period is stated in the order—the shorter period.
- (2) This section does not apply to an order made in relation to a mentally ill or mentally dysfunctional offender.

36K Contravention of psychiatric treatment order or community care order

- (1) This section applies if—
- (a) a mental health order (but not a restriction order) is in force in relation to a person; and
 - (b) the person contravenes the order.
- (2) This section also applies if—
- (a) a restriction order is in force in relation to a person; and

-
- (b) the relevant official tells the tribunal that the relevant official considers that the person has contravened the order; and

Note The tribunal must review the order within 72 hours after being notified under this section (see s 36L (2)).

- (c) the tribunal authorises the relevant official to act under this section.

- (3) The relevant official may—

(a) orally tell the person that failure to comply with the order may result in the person being apprehended and being taken to an approved mental health facility for treatment or care; and

(b) if the noncompliance continues after the taking of action under paragraph (a)—tell the person in writing that failure to comply with the order will result in the person being apprehended and being taken to an approved mental health facility for treatment or care; and

(c) if the noncompliance continues after the taking of action under paragraph (b)—require the person to be detained in an approved mental health facility to ensure compliance with the order.

- (4) If the relevant official requires the detention of a person under subsection (3) (c), he or she must tell the tribunal and the community advocate—

(a) the name of the person detained; and

(b) the reasons for requiring the detention; and

(c) the name and address of the approved mental health facility where the person is detained.

- (5) If a person is required to be detained under subsection (3) (c), a police officer, mental health officer or doctor may apprehend the person and take the person to an approved mental health facility.

- (6) For subsection (5), a police officer, mental health officer or doctor—
 - (a) may use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the facility; and
 - (b) if there are reasonable grounds for believing that the person is at particular premises—may enter those premises using the force and assistance that is necessary and reasonable.
- (7) If a person is detained under subsection (3) (c), the relevant official must tell the tribunal and the community advocate within 72 hours.
- (8) In this section:
relevant official—see section 36H (8).

36L Review, variation and revocation of orders

- (1) The tribunal may, on application or on its own initiative, review a mental health order in force in relation to a person.
- (2) If the tribunal receives notice under section 34, section 36F or section 36K (2) in relation to a person, the tribunal must review the mental health orders in force in relation to the person within 72 hours.
- (3) Subsection (2) has effect despite section 94 (Notice of proceedings).
- (4) If the tribunal is satisfied that a person subject to a psychiatric treatment order or community care order is no longer a person in relation to whom the tribunal could make a psychiatric treatment order or community care order, the tribunal must revoke all the mental health orders in force in relation to the person.
- (5) In any other case, the tribunal may, if appropriate to do so—
 - (a) vary or revoke any of the mental health orders in force in relation to the person; or

- (b) make additional mental health orders in relation to the person;
or
- (c) make an order for another assessment under section 16 in relation to the person.

**12 Approved facilities
Section 48 (1) (a)**

omit

under section 26 (1) or 37

substitute

under a psychiatric treatment order mentioned in section 29 (1) or under section 37

13 Section 48 (1) (b)

omit

section 32A

substitute

section 36K

**14 Definitions for pt 5A
Section 48B, definition of *custodial order***

substitute

custodial order means a psychiatric treatment order.

15 **Meaning of *responsible person***
Section 49, definition of *responsible person*,
paragraph (c)

substitute

- (c) in relation to any other mental health institution or community care facility conducted by the Territory—the chief executive of the administrative unit responsible for the conduct of the institution or facility.

16 **Statement of rights**
Section 50 (1)

after

mental health facility

insert

or community care facility

17 **Information to be provided**
Section 51

after

mental health facility

insert

or community care facility

18 **New section 51 (d) (va)**

insert

- (va) the care coordinator;

19 Section 51 (d)

renumber subparagraphs when Act next republished under Legislation Act

**20 Communication
Section 52**

after

mental health facility

insert

or community care facility

**21 Restriction on use
Section 55 (2) and (3)**

omit

a person in respect of whom a mental health order of the kind described in section 26 (1) is in force

substitute

a person in relation to whom a psychiatric treatment order is in force

**22 Duration of appointment
Section 81 (3) (f)**

substitute

- (f) a member who is the subject of a psychiatric treatment order or a community care order.

**23 Constitution for exercise of powers
Section 83 (2) (b)**

omit

section 36

substitute

section 36L

**24 Notice of proceedings
New section 94 (ga)**

insert

(ga) the care coordinator;

25 Section 94

renumber paragraphs when Act next republished under Legislation Act

**26 Service of orders
New section 105 (fa) and (fb)**

insert

(fa) if the order is a psychiatric treatment order, or a restriction order in relation to a person subject to a psychiatric treatment order—the chief psychiatrist; and

(fb) if the order is a community care order, or a restriction order in relation to a person subject to a community care order—the care coordinator; and

27 Section 105

renumber paragraphs when Act next republished under Legislation Act

28 New part 10A*insert***Part 10A Care coordinator****120A Care coordinator**

- (1) The Minister must appoint a public servant as care coordinator.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) The Minister may only appoint a person as care coordinator if satisfied that the person has the training, experience and personal qualities necessary to exercise the care coordinator's functions.
- (3) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

120B Functions

The care coordinator has the following functions:

- (a) to coordinate the provision of treatment, care and support to mentally dysfunctional people in accordance with community care orders made by the tribunal;
- (b) to coordinate the provision of appropriately trained people for the treatment, care and support of mentally dysfunctional people who are subject to community care orders;
- (c) to coordinate the provision of appropriate residential or detention facilities for mentally dysfunctional people who are subject to community care orders and to restriction orders mentioned in section 36C (a);

- (d) to coordinate the provision of medication and anything else required to be done for mentally dysfunctional people in accordance with community care orders and restriction orders made by the tribunal;
- (e) to make reports and recommendations to the Minister about matters affecting the provision of treatment, care, control, accommodation, maintenance and protection for mentally dysfunctional people.

120C Termination of appointment

- (1) The Minister may terminate the appointment of the care coordinator for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of the care coordinator if the care coordinator ceases to be eligible to be appointed as the care coordinator.

120D Delegation by care coordinator

- (1) The care coordinator may delegate the care coordinator's functions under this Act to anyone else.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

- (2) However, the care coordinator may only delegate a function to a person if the care coordinator is satisfied that the person has the training, experience and personal qualities necessary to exercise the function.
- (3) A delegation is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

120E Care coordinator's annual report

A report prepared by the care coordinator under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include

statistics in relation to people who have a mental dysfunction during the year.

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

29 Sections 142 and 143

substitute

142 Relationship with Guardianship and Management of Property Act

- (1) Despite anything in the *Guardianship and Management of Property Act 1991* or an order appointing a guardian, a guardian appointed for a person under that Act—
 - (a) is not entitled to give consent to treatment for mental illness, convulsive therapy or psychiatric surgery; and
 - (b) if the person is subject to a community care order—is not entitled to decide anything for the person contrary to any determinations or decisions made in relation to the person by the care coordinator under the community care order (or any related restriction order).
- (2) Despite anything in the *Guardianship and Management of Property Act 1991*, section 70, the guardianship tribunal—
 - (a) is not entitled to make an order in relation to any consent to treatment for mental illness, convulsive therapy or psychiatric surgery; and
 - (b) is not entitled to make an order in relation to a person contrary to any community care order (or restriction order) made in relation to the person.

143 Relationship with Powers of Attorney Act

Despite anything in the *Powers of Attorney Act 1956* or an instrument creating a power of attorney, an attorney of a person appointed under a power of attorney under that Act—

- (a) is not entitled to give consent to treatment for mental illness, convulsive therapy or psychiatric surgery; and
- (b) if the person is subject to a community care order—is not entitled to decide anything for the person contrary to any determinations or decisions made in relation to the person by the care coordinator under the community care order (or any related restriction order).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 May 2004.

2 Notification

Notified under the Legislation Act on 11 August 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Mental Health (Treatment and Care) Amendment Bill 2004, which was passed by the Legislative Assembly on 3 August 2004.

Clerk of the Legislative Assembly

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