

1998

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Mental Health (Treatment and Care) (Amendment) Bill (No.2) 1998

Explanatory Memorandum

Circulated by Authority of
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Minister for Health and Community Care

Mental Health (Treatment and Care) (Amendment) Bill (No.2) 1998

Summary

This sole purpose of this Bill is to extend the operation of the *Mental Health (Treatment and Care) Act 1994* ("the Act") until 30 June 1998.

At present, the Act expires on 4 February 1999.

The Act was passed as interim legislation in 1994 and commenced in February 1995. Section 3 of the Act provides for the Act to expire 24 months following its commencement, with the capacity for a further 24 month extension where determined by the Minister. In November 1996, the Minister for Health agreed to extend the Act to February 1999.

A review of the Act was commenced in March 1997 which began an extensive consultation period. A Report on the review was released in January 1998. This Report included a number of complex issues which required lengthy consideration within Government.

The Government tabled proposed amendments in the Assembly on 26 November 1998. These amendments include the repeal of the 'sunset clause'. The Government sought to have the proposed amendments considered by the Assembly prior to the end of the 1998 sitting period so that the Act would continue to have effect from February 1999.

However, the Assembly has delayed consideration of the substantive amendments to the Act until 1999. Without an amendment to the sunset clause, the Act will cease to have effect from 5 February 1999. This would leave the ACT without effective mental health legislation.

This Bill will extend the operation of the Act to 30 June 1999 to provide sufficient time for the Assembly to consider the substantive amendments proposed in the *Mental Health (Treatment and Care) (Amendment) Bill 1998*.

This Bill is complementary to the *Crimes (Amendment) Bill (No.8) 1998*, which provides for an extension to Part XIA of the *Crimes Act 1900*. Part XIA of the Crimes Act deals with:

- accused persons who are not fit to plead;
- acquittal on the grounds of mental illness;
- convicted persons who are mentally dysfunctional; and
- summary proceedings against mentally dysfunctional persons.

Detail of the Bill

Clause 1 - Short Title

This clause provides that the short title of the Act will be the *Mental Health (Treatment and Care) (Amendment) Bill (No.2) 1998* ("the Bill")

Clause 2 - Commencement

This clause details the commencement provisions of the Bill. The provisions of the Bill will commence on the day in which the Bill is notified as an Act in the *Gazette*.

Clause 3 - Principal Act

This clause provides details of the principal Act which the Bill seeks to amend. The principal Act is the *Mental Health (Treatment and Care) Act 1994* ("the Act")

Clause 4 - Substitution

This clause replaces the current Section 3 of the Act, which provides that the Act will cease a maximum of 4 years from its commencement date, with a provision that provides that the Act ceases to have effect on 30 June 1999.

Under the current provision the Act would cease to have effect from 5 February 1999. This clause enables the extension of the expiration date of the Act to enable the Assembly to consider the substantive amendments to the Act contained in the *Mental Health (Treatment and Care) (Amendment) Bill 1998* (Presented in the Assembly on 26 November 1998).