

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**Mental Health (Treatment and Care)
(Amendment) Bill 1997**

EXPLANATORY MEMORANDUM

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OUTLINE

This is an amending Bill. It amends the *Mental Health (Treatment and Care) Act 1994* referred to in the amending Bill as the Principal Act. The Principal Act provides for the treatment and care of mentally dysfunctional persons and was enacted following the “Balancing Rights” Report of the ACT Mental Health Review Committee

The Principal Act established a Mental Health Tribunal to replace the Magistrates Court in making treatment orders for mentally dysfunctional persons, enabled the Tribunal to make a broad range of orders, established a clear process for mentally dysfunctional persons referred from the criminal justice system, provided a clear statement of rights of mentally dysfunctional persons, and set down stricter requirements for informed consent to convulsive therapy and psychiatric surgery

The proposed amendments to the Principal Act (new Part VA) provide for agreements to be made with other States or Territory Ministers relating to the interstate application of mental health laws. They also provide for the legislative implementation of matters that may be the subject of such agreements. Part VA

- a) enables emergency admission of persons to health facilities in other States or Territories (Division 2)
- b) enables transfer of custodial patients from this Territory to health facilities in other States or Territories (Division 2)
- c) enables emergency admission of interstate persons to health facilities in this Territory (Division 3)
- d) enables transfer of interstate custodial patients to health facilities in this Territory (Division 3)
- e) enables non-custodial orders made in this Territory to be made in relation to persons in other States or Territories (Division 4)
- f) enables treatment in this Territory of persons subject to interstate orders, like our mental health orders (Division 4)
- g) enables the detention in this Territory of persons who are the subject of warrants, orders or other documents for apprehension issued under the mental health laws of another State or Territory, or who are otherwise liable to be apprehended under such a law, for example when the person is absent from a health facility without leave, or breaches the equivalent of a mental health order (Division 5)

The impetus for these amendments arose from the need to broaden the options for the detention, treatment and care of mentally dysfunctional patients. The provisions mirror amendments to the NSW Mental Health Act which have recently come into force. Once this amendment and consequent regulations come into force, the Minister for Health and Community Care will be able to enter into an agreement with the NSW Minister for Health for the transfer of patients.

Revenue/Cost implications

Any agreement reached with NSW (or any other State) for accommodation of ACT patients will require payment to that State in some form (either through the assessments of the Commonwealth Grants Commission, or by more direct interstate charging). However the Bill itself has no financial implications.

DETAILS OF THE BILL

Formal Clauses

Clauses 1 to 3 are formal requirements. They refer to the short title of the Bill, commencement date, and definition of the Principal Act. The Bill commences on the date on which it is notified in the *Gazette*.

Insertion Clause

Clause 4 specifies the place in the Principal Act that the amendment is inserted, and inserts the proposed new Part VA, which follows.

Object of Part

New section 48A states that the objective of the new Part VA is to allow for the interstate transfer and treatment of patients, recognition of interstate mental health orders, and apprehension of persons subject to interstate mental health legislation.

Interpretation

New section 48B sets out definitions to facilitate the mutual recognition of interstate mental health laws. In particular, the phrases “custodial order” and “non-custodial order” are general terms intended to ensure recognition of interstate orders, where there may be specific differences between the ACT and other States/Territories in the names and coverage of some orders.

Authority to enter into agreements

New section 48C allows the Minister for Health and Community Care to make agreements with interstate counterparts for the transfer, detention and apprehension of persons subject to interstate mental health laws.

Recognition of interstate laws and orders

New section 48D enables regulations to be made so that interstate mental health laws, patients and orders can be recognised under the Act. Paragraph (3) specifies that patients being transferred from interstate to the Territory can be classified according to whether their detention is on an emergency basis (section 38), following initial examination by a doctor (section 41), or following a mental health order. This is necessary as interstate laws setting out procedures for emergency detention, examination, and subsequent orders may not correspond precisely with the Territory Act.

Officers of the Territory may exercise functions under corresponding laws

New section 48E enables an authorised person to act to meet the requirements of an interstate law, or as specified in an agreement between Ministers.

Emergency admission of persons to health facilities in other States

New section 48F allows for an ACT resident to be apprehended for emergency detention and care in another State, if that State’s laws allow it.

Transfer of custodial patients from the Territory

New section 48G enables Territory health authorities to transfer a patient to an interstate health facility, if the State’s laws allow it.

Application of Act to persons transferred interstate

New section 48H states that the Act would generally not apply to an interstate patient who is initially detained in an interstate facility and then transferred to the Territory (paragraph 1), but allows this to be overridden by agreement (paragraph (2))

Emergency admission of interstate persons to approved health facilities

New section 48I provides for the reverse process to clause 48F it allows for an interstate patient to be apprehended for emergency detention in a hospital or other facility in the Territory.

Application of Act to persons detained under section 48I

New section 48J specifies that the Act's emergency apprehension provisions (section 37) apply to an interstate patient taken to a Territory health facility.

Transfer of interstate custodial patients to health facilities in the Territory

New section 48K provides for the reverse process to clause 48G it enables an interstate patient to be transferred and detained in a Territory health facility

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

New section 48L specifies that if no regulation has been made under clause 48D (3), an interstate custodial patient would be covered by the Act's emergency detention provisions (section 38) Otherwise, regulations can be made in accordance with clause 48D (3), which would classify custodial patients being transferred from interstate to a Territory facility according to whether their detention is on an emergency basis (section 38), following initial examination by a doctor (section 41), or following a mental health order This is necessary as interstate laws setting out procedures for emergency detention, examination, and subsequent orders may not correspond precisely with the Territory Act

Non-custodial orders relating to interstate persons, and Orders relating to Territory residents

New sections 48M and 48N allow for non-custodial orders (often referred to in this Territory as community treatment orders) made in one State or Territory to be recognised and implemented in the other

Recognition of warrants and orders

New section 48O provides for the recognition by Territory authorities of warrants, orders and other documents issued under mental health laws of another State or Territory

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

New section 48P allows for the apprehension and transfer to an interstate health facility of persons who are absent without leave from their State or Territory

Regulations relating to apprehension of persons

New section 48Q sets out the range of regulations that can be made regarding warrants, orders, and conditions of transfer of persons apprehended under clause 48P