

1994

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

MENTAL HEALTH (TREATMENT AND CARE)  
(CONSEQUENTIAL PROVISIONS) BILL 1994

SUPPLEMENTARY  
EXPLANATORY MEMORANDUM

Amendments to be moved  
on behalf of the Government

Circulated by Authority of the Attorney General  
and Minister for Health

Terry Connolly MLA

## MENTAL HEALTH ( CONSEQUENTIAL PROVISIONS ) BILL 1994

These amendments repeal entirely the Lunacy Act 1898 (NSW) in its application to the Territory, amend the *Guardianship and Management of Property Act 1991* to clarify the relationship between that Act and the Mental Health (Treatment and Care) Bill 1994, and make a number of other minor consequential amendments to various Territory laws.

The remaining sections of the Lunacy Act 1898 are leftover provisions dealing with procedures in hospitals for the criminally insane and procedures for getting prisoners to and from those hospitals. The amendments in the Crimes (Amendment) Bill 1994 will overtake the process for persons who are found to be unfit to plead. The remaining provisions of the Lunacy Act 1898 have no continuing application and the Act is therefore repealed.

The amendments to the *Guardianship and Management of Property Act 1991* make it clear that Guardianship Tribunal cannot consent to treatment for psychiatric illness, convulsive therapy or psychiatric surgery. There are specific procedures in the Mental Health (Treatment and Care) Bill 1994 to cover situations where a person cannot consent to these treatments. These amendments ensure that the specific procedures in the Bill are followed rather than using the more general procedures in the *Guardianship and Management of Property Act 1991*.

Proposed clause 33B and the proposed Schedule make minor amendments to Territory laws. The amendments in the Schedule arise out of the repeal of the *Mental Health Act 1983* and the Lunacy Act 1898 (NSW) in its application in the Territory. There are also a number of other amendments to remove outdated terms such as "lunatic" and "insane persons". These latter amendments are not strictly consequential upon the new *Mental Health (Treatment and Care) Act 1994* but are consistent with the spirit of the new legislation.

Details of these amendments are as follows.

### Amendment 1

This amendment substitutes a new clause 31. The new clause 31 provides for the complete repeal of the Lunacy Act 1898 (NSW) in its application in the Territory.

### Amendments 2 and 3

These amendment insert new clauses 33A and 33B and the Schedule.

Clause 33A amends the *Guardianship and Management of Property Act 1991* so that the Guardianship Tribunal cannot consent to a prescribed medical procedure where that procedure is treatment for a psychiatric illness, convulsive therapy or psychiatric surgery.

Clause 33B provides for the amendment of various Territory laws as set out in the Schedule. The amendments specified in the Schedule are a series of minor amendments arising out of the repeal of the Lunacy Act 1898 (NSW) in its application in the Territory, the repeal of the *Mental Health Act 1983* by clause 4 of the Bill, and the enactment of the *Mental Health (Treatment and Care) Act 1994*. The Schedule also amends various references to "lunacy" and "insane persons" by substituting less colourful expressions.

### Amendment 4

This amendment to the long title of the Bill is made as a consequence of the complete repeal of the Lunacy Act 1898 (NSW) in its application in the Territory by the amendment to clause 31 made by the first Government amendment.