

2007

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**MENTAL HEALTH (TREATMENT AND CARE) AMENDMENT BILL 2007
EXPLANATORY STATEMENT**

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MENTAL HEALTH (TREATMENT AND CARE) AMENDMENT BILL 2007

OBJECTIVE

The objective of the *Mental Health (Treatment And Care) Amendment Bill 2007* is to make technical amendments to the *Mental Health (Treatment And Care) Act 1994 (the Act)* to better express the intention *the Act* in several sections where some confusion as to the intention has arisen.

SUMMARY OF CLAUSES

Clause 1 sets out the name of the Act, which is the *Mental Health (Treatment And Care) Amendment Bill 2007*.

Clause 2 provides for commencement of the Act on the day after its notification.

Clause 3 specifies that the Bill amends the *Mental Health (Treatment And Care) Act 1994 (the Act)*.

Clause 4 and Clause 5 amend section 4A of the Act consequential on the changes made to Part 7 of the Act.

Clause 6 and Clause 7 amend section 5 of the Act. Although the 1994 Explanatory Memorandum for the Act makes it clear that “mental dysfunction” is defined to include “mental illnesses” and hence technically “mental illness” is encompassed in the section, this is not clear in the wording of the Act. The title of the section and the reference within the section are amended to make it clear that people can not be considered either mentally ill or mentally dysfunctional merely because of their political, religious, philosophical beliefs or the other limits set out in Section 5 of the Act.

Clauses 8 to 14 amend Part 5A of the Act.

The intention of Part 5A of the Act is to provide for regulations that declare that a specified law of another State relating to mental health is a corresponding law for this part of the Act. It also provides for the Minister to make agreements with other States and Territory Ministers relating to the interstate application of mental health laws.

Clause 9 expresses the intent that only persons who are subject to a psychiatric treatment order and are currently detained under the Act may be transferred to another state as a custodial patient from the ACT.

Clause 14 expresses the intent that the Mental Health Tribunal may make a psychiatric treatment order for someone even though they do not reside in the ACT, with the condition that these orders must be non-custodial in nature.

Psychiatric treatment orders (PTOs) serve the function of both the non-custodial community treatment orders and, when combined with restriction orders, the custodial inpatient orders (as variously named) of other Australian jurisdictions.

The amendments allow the psychiatric treatment order to be the equivalent of a non-custodial community treatment order of the other States for section 48M of the Act. This enables the ACT Mental Health Tribunal to make a non-custodial psychiatric treatment order on a person residing interstate as intended by Division 5A.4 of the Act.

Specifically, a PTO alone may not permit detention (section 29(2)), but it may be combined with a restriction order that does allow detention (section 31(a)(ii)).

New subsection 30(2) will prevent the Tribunal from issuing a restriction order where the person does not reside in the ACT.

This does not limit the monitoring and enforcement methods for interstate orders. Where a person contravenes such an order, the agency responsible will negotiate with the local mental health agency on the consequences of the contravention. Division 5A.5 allows for processes for a person who is in breach of an order. These processes must be used where there is a current interstate agreement.

Clause 15 and Clause 16 amend the headings of sections **55C** and **55J** to read “**Offence - electroconvulsive therapy on 10 or more occasions ...**”. The intent of the Act is that consent to treatment for these orders from the tribunal only applies up to and including nine occasions. The headings of these sections are amended to accurately reflect the intent of the Act and the content of the sections.

Clause 17 amends Section 119(2) to include occupational therapists as persons eligible to be appointed Mental Health Officers.

Mental health nurses, psychologists and social workers can be appointed as mental health officers. Occupational therapists are appointed to similar mental health clinical positions; the amendment enables occupational therapists to be appointed mental health officers under the direction of the chief psychiatrist.

Clause 18 and Clause 19 amend the Dictionary to reflect the other amendments to the Act.