

MENTAL HEALTH (AMENDMENT) ACT 1994 No. 25

NEW SOUTH WALES



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Section 33

MENTAL HEALTH (AMENDMENT) ACT 1994 No. 25

NEW SOUTH WALES



Act No. 25, 1994

An Act to amend the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990 to implement recommendations of the Mental Health Act Implementation Monitoring Committee relating to the detention and treatment of patients, community counselling and community treatment orders, hospital administration and management, court orders and other matters; and for other purposes. [Assented to 30 May 1994]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Mental Health (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Mental Health Act 1990 No. 9

3. The Mental Health Act 1990 is amended as set out in Schedule 1.

Amendment of Mental Health (Criminal Procedure) Act 1990 No. 10

4. The Mental Health (Criminal Procedure) Act 1990 is amended as set out in Schedule 2.

Explanatory notes

5. Matter appearing under the heading “Explanatory note” in the Schedules does not form part of this Act.

**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990**

(Sec. 3)

Amendments: detention of patients in hospitals

- (1) Section 18 (**Other functions of medical superintendent concerning informal patients**):

From section 18 (b), omit “admitted to and detained in a”, insert instead “detained in the”.

- (2) Section 18A:

After section 18, insert:

Procedures for detaining patients

18A. If the medical superintendent decides under section 18 (b) to take action to detain an informal patient in the hospital under Part 2, the patient:

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

- (a) must be dealt with as if the patient has been admitted to and detained in the hospital under section 21; and
- (b) must be examined under section 29 not later than 12 hours after the medical superintendent decides to take action to detain the patient.

Explanatory note

Items (1) and (2) enable the medical superintendent of a hospital to detain a patient who is in hospital voluntarily (ie an informal patient) as an involuntary patient if the medical superintendent considers it proper to do so having regard to the condition of the patient. In such a case, the patient must be medically examined not later than 12 hours after the medical superintendent decides to detain the patient as an involuntary patient. This amendment streamlines existing admission procedures.

(3) Section 21 (**Detention on certificate of medical practitioner or accredited person**):

After “medical practitioner” wherever occurring, insert “or an accredited person”.

(4) Section 22 (**Assistance by police**):

In section 22 (1), after “medical practitioner”, insert “or an accredited person”.

(5) Section 27 (**Detention following order for medical examination or observation**):

- (a) In section 27 (1), after “a medical practitioner”, insert “or an accredited person”.
- (b) In section 27 (1), after “the medical practitioner”, insert “or accredited person”.
- (c) In section 27 (4), after “A medical practitioner”, insert “or an accredited person”.

Explanatory note

Items (3), (4) and (5) enable accredited persons as well as medical practitioners to authorise the detention of a person in a hospital (other than an authorised hospital) and to carry out other related functions. See item (14) for the appointment of accredited persons.

SCHEDULE 1— AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(6) Section 29 (Examination on detention at hospital):

(a) Omit section 29 (1), insert instead:

(1) A person taken to and detained in a hospital under this Division must be examined, as soon as practicable (but not more than 12 hours) after the person's arrival at the hospital, by the medical superintendent.

(b) In section 29 (2), after "section 37" insert "or 37A".

(c) After section 29 (2), insert:

(3) A medical practitioner on whose certificate or request a person has been admitted to a hospital must not examine the person for the purposes of this section.

Explanatory note

Item (6) relates to procedures for dealing with persons who have been brought to hospital involuntarily. Item (6) (a) increases from 4 hours to 12 hours the maximum time for which a person may be detained in a hospital before being examined by the medical superintendent to determine whether the person is a mentally ill person or a mentally disordered person. Item (6) (c) makes it clear that a medical practitioner on whose certificate or request a person has been admitted to a hospital must not examine the person for the purposes of determining whether the person is a mentally ill person or a mentally disordered person.

(7) Section 30:

Omit the section, insert instead:

Information to be given to detained person

30. (1) The medical superintendent must, as soon as practicable after a person is taken to a hospital under this Division, give to the person an oral explanation and a written statement (in the form prescribed by the regulations) of the person's legal rights and other entitlements under this Act.

(2) The medical superintendent must, as soon as practicable after it is decided to do all such things as may be necessary to cause a person who is an informal patient to be detained in a hospital under this Division, give to the person an oral explanation and a written statement (in the form prescribed by the regulations) of the person's legal rights and other entitlements under this Act.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(3) If the medical superintendent is of the opinion that a person is not capable of understanding the explanation or statement when it is first given, another explanation or statement must be given to the person not later than 24 hours before an inquiry is held before a Magistrate in respect of the person.

(4) The medical superintendent must, if the person is unable to communicate adequately in English but is able to communicate adequately in another language, arrange for an oral explanation under this section to be given in that other language.

Explanatory note

Item (7) makes sure that a person who is admitted to a hospital as an involuntary patient, or whose status changes from an informal patient to an involuntary patient, is given information about his or her rights by the medical superintendent (orally and in writing) as soon as practicable. An interpreter is to be provided for those persons who are unable to communicate adequately in English. If a medical superintendent is of the opinion that a person is not capable of understanding the oral or written information given, then another explanation or statement must be given to the person not later than 24 hours before an inquiry is held before a Magistrate. At the inquiry the Magistrate determines whether the person is a mentally ill person and the action to be taken in respect of the person.

(8) Section 33 (Consequence of further examination):

In section 33 (a), after “section 37”, insert “or 37A”.

(9) Section 35 (Limited detention of mentally disordered persons):

(a) Omit section 35 (1), insert instead:

(1) A person who has, under section 29, been certified to be a mentally disordered person and who has not subsequently, on examination under section 32, been found to be a mentally ill person must not be detained in the hospital for a continuous period of more than 3 days (not including weekends and public holidays).

(b) In section 35 (3), after “mentally disordered person” wherever occurring, insert “or a mentally ill person”.

(c) In section 35 (3), after “section 37”, insert “or 37A”.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*(10) Section 36 (**Persons detained after apprehension by police or brought to hospital on Magistrate's order**):

In section 36 (2), (3), (4) and (S), after “section 37” wherever occurring, insert “or 37A, in the case of a person who is ordered under section 33 (1) (b) of the Mental Health (Criminal Procedure) Act 1990 to be brought back before the court following assessment at a hospital if not detained at the hospital”.

(11) Section 37A:

After section 39, insert:

Persons ordered to be brought back before Court

37A. (1) This section applies to a person who is ordered under section 33 (1) (b) of the Mental Health (Criminal Procedure) Act 1990 to be brought back before the court following assessment at a hospital if not detained at the hospital and who is, by virtue of section 36, to be dealt with in accordance with this section.

(2) If a police officer is present at the hospital to ascertain the results of any examination or examinations when the decision not to certify a person is made or the relevant opinions or opinion are or is known to the medical superintendent, the medical superintendent must release the person into the custody of the police officer.

(3) If a police officer is not so present, the medical superintendent must, as soon as practicable after that decision is made or the relevant opinions or opinion are or is known to the medical superintendent, notify a police officer at the police station nearest to the hospital, or a police station nominated for the purposes of this section by the Commissioner of Police, that the person will not be further detained.

(4) It is the duty of the police officer notified by the medical Superintendent to ensure that a police officer attends the hospital and apprehends the person as soon as practicable after the notification.

(5) The medical superintendent must detain the person pending the apprehension of the person by a police officer.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(12) Section 38 (**Notice of inquiry and other matters**):

Omit section 38 (1), insert instead:

(1) A medical superintendent must, after receiving advice under section 33 (1) that a person is a mentally ill person or that a person detained under section 29 as a mentally ill person is a mentally disordered person, and after complying with this section, bring the person before a Magistrate as soon as practicable.

(13) Section 40 (**Termination of detention**):

(a) In section 40 (1) (a), after “person” where secondly occurring, insert “or a mentally disordered person”.

(b) After section 40 (1), insert:

(1A) If, at any time before a person is brought before a Magistrate under section 38, the medical superintendent is of the opinion that the person has ceased to be a mentally ill person but is a mentally disordered person, the person must not be further detained for a period of more than 3 days (not including weekends and public holidays).

Explanatory note

Items (9), (12) and (13) contain amendments which clarify procedures where a person who is detained in a hospital as a mentally ill person is found on a second or later examination to be a mentally disordered person and where a person who is detained as a mentally disordered person is found on a second examination to be a mentally ill person. Currently, a person who is found to be a mentally ill person for the purposes of the Act on more than one examination must be taken before a Magistrate to determine whether the person is to stay in hospital involuntarily and for how long. This will also apply where a person who is detained as a mentally ill person is found on a second examination to be a mentally disordered person and where a person who is detained as a mentally disordered person is found on a second examination to be a mentally ill person (Item (12)). The amendments make it clear that the limited detention period (3 days) for persons found to be mentally disordered persons applies only to a person who is detained as a mentally disordered person and who is not on subsequent examination found to be a mentally ill person (Item (9)). However, other persons detained in the hospital, and not yet brought before a Magistrate, will be subject only to the limited detention period if the medical superintendent forms the opinion that they are mentally disordered persons (Item (13)).

Item (11) inserts a new provision resulting from amendments to orders which may be made by Magistrates under section 33 of the Mental Health (Criminal Procedure) Act 1990 (see explanation in Schedule 2). Items (6) (b), (8) and (10) make consequential amendments.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(14) Section 287A:

After section 287, insert:

Accredited persons

287A. (1) The Director-General may, by order published in the Gazette, appoint a person as an accredited person for the purpose of giving certificates under section 21 or acting under section 27.

(2) An order may appoint the holder of an office as an accredited person and may limit the area in which, or specify the circumstances in which, a person or office holder may act as an accredited person.

(15) Schedule 1 (**Dictionary of terms used in Act**):

Insert, in appropriate order:

accredited person means a person appointed under section 287A to be an accredited person;

Explanatory note

Item (14) provides for the appointment of “accredited persons” by the Director-General of the Department of Health by order published in the Government Gazette. Amendments made by Items (3), (4) and (5) confer functions on accredited persons. Item (15) makes a consequential amendment.

Amendment: transfers from hospitals to prison

(16) Section 96 (**Requests for transfer to prison**):

After section 96 (2), insert:

(2A) The Tribunal must make the recommendation if it is satisfied that the person is not a mentally ill person.

Explanatory note

Currently, a forensic patient detained in a hospital may request the Mental Health Review Tribunal to be transferred from the hospital to a prison. The Tribunal has power to recommend the transfer to the Minister, who may in turn order the transfer.

Item (16) requires the Tribunal to recommend the return to prison of a forensic patient who is detained in a hospital and makes such a request, if the Tribunal is satisfied that the patient is not a mentally ill person.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

Amendments: transfers from prisons to hospitals

- (17) Section 97 (**Transfer of mentally ill prisoners to hospitals**):
From section 97 (1), omit “mentally ill (whether or not the person is suffering from a mental illness within the meaning of this Act)”, insert instead “a mentally ill person”.
- (18) Section 98 (**Transfer of other prisoners to hospitals**):
From section 98 (3), omit “suffering from mental illness”, insert instead “who is a mentally ill person”.

Explanatory note

Currently, the Chief Health officer of the Department of Health may order the transfer of a person from a prison to a hospital if there are 2 certificates by medical practitioners stating that the person is mentally ill even though the person may not be suffering from a mental illness within the meaning of the Act.

Item (17) changes this so that a prisoner may be involuntarily transferred from a prison to a hospital only if the prisoner is a mentally ill person within the meaning of the Act. This makes the position of such a person closer to that of other persons who may be detained in hospitals under the Act. Item (18) makes a consequential amendment.

Amendments: community counselling orders and community treatment orders

- (19) Section 115 (**Directors and Deputy Directors**):
Omit section 115 (1), insert instead:
(1) The Director-General must appoint the holder of a specified office as the Director of a health care agency declared under this Part and may appoint the holder of a specified office as the Deputy Director of the health care agency.
- (20) Section 124 (**Duration of community counselling orders**):
From section 124 (1) (c), omit “or an informal patient”.
- (21) Section 124A:
After section 124, insert:
Effect on order of informal admission to hospital
124A. (1) A community counselling order has no effect while an affected person is an informal patient but (if it does not otherwise expire or is not revoked) has effect if the person ceases to be an informal patient.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(2) A community counselling order affected by this section expires on the date it would have otherwise expired under this Act despite any period during which it has no effect.

(22) Section 131 (**Making of community treatment orders**):

From section 131 (l), omit “Part 3 of”.

(23) Section 135 (**Duration of community treatment orders**):

From section 135 (1) (c), omit “or an informal patient”.

(24) Section 135A:

After section 135, insert:

Effect on order of informal admission to hospital

135A. (1) A community treatment order has no effect while an affected person is an informal patient ‘but (if it does not otherwise expire or is not revoked) has effect if the person ceases to be an informal patient.

(2) A community treatment order affected by this section expires on the date it would have otherwise expired under this Act despite any period during which it has no effect.

(25) Section 142:

Omit the section, insert instead:

Procedure at hospital

142. On arrival at a hospital of an affected person taken there by virtue of an order under section 139 or under section 141 after refusing treatment at a health care agency:

- (a) the person is to be given notice (in the form prescribed by the regulations) of his or her right to apply for a review of the order, to lodge an appeal and to apply for discharge from the hospital; and
- (b) the medical superintendent must review the person’s mental condition; and
- (c) if the medical superintendent considers it appropriate, the person is to be given treatment in accordance with the community treatment order.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT

1990—*continued***Explanatory note**

The Act establishes both a scheme for treatment of persons who are mentally ill in hospitals and a scheme for treatment in the community in accordance with community counselling orders and community treatment orders. Such orders are of limited duration. The Committee recommended changes relating to the effect of hospitalisation on such orders.

Item (19) omits the requirement to publish in the Government Gazette the appointment of a Director or Deputy Director of a health care agency (orders are administered by health care agencies).

Items (21) and (24) provide that a community counselling order or a community treatment order has no effect while the person the subject of the order is in hospital as an informal patient (ie voluntarily). Such an order continues to have effect if the person ceases to be an informal patient unless the order has not otherwise expired or been revoked. The period during which the community counselling or treatment order has no effect because of the person's admission as an informal patient is not taken into account in determining when the order expires. Item (20) and (23) make consequential amendments.

Item (22) enables the Mental Health Review Tribunal to make community treatment orders for all detained patients (other than forensic patients) appearing before the Tribunal for their regular review by it.

Item (25) substitutes the provision relating to persons brought to hospitals because of breaches of community treatment orders, or refusal of treatment at health care agencies. In such cases, no treatment (eg medication) is to be given to a person until the person's mental condition has been reviewed by the medical superintendent

Amendments: electro convulsive therapy and other prescribed treatments

- (26) Section 185 (**Circumstances in which treatment may be administered with consent—persons other than involuntary patients**):

At the end of section 185, insert:

(2) A medical superintendent who is unsure whether a person is capable of giving informed consent may apply to the Tribunal to have the Tribunal determine whether the person is capable of giving informed consent and has given that consent.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(27) Section 188:

Omit the section, insert instead:

Application to Tribunal to administer treatment to involuntary patients

188. (1) If at least 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that, after considering the clinical condition and history of treatment of, and any appropriate alternative treatments for, a patient (not being an informal patient) or any other person under detention in a hospital, they are of the opinion that treatment to which this Division applies is:

- (a) a reasonable and proper treatment to be administered to the patient or person; and
- (b) necessary or desirable for the safety or welfare of the patient or person,

the medical superintendent may apply to the Tribunal to determine the matters set out in subsection (2).

(2) The matters to be determined are:

- (a) whether or not the patient or person is capable of giving informed consent to the administration to the patient or person of the treatment and has given that consent; and
- (b) in the case of proposed electro convulsive therapy, if the patient is incapable of giving informed consent or capable of giving informed consent but has refused, or has neither consented nor refused, to the administration of the treatment, whether its administration is reasonable and proper and is necessary or desirable for the safety or welfare of the person.

(28) Section 189 (**Application to Tribunal to administer electro convulsive therapy without consent to patient**):

Omit the section.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(29) Section 190:

Omit the section, insert instead:

Notice of inquiry to obtain or determine consent

190. (1) On making an application to the Tribunal under section 185 or 188 in respect of a person or patient, the medical superintendent must, in accordance with the regulations, do all such things as are reasonably practicable to give notice to the following persons of the application:

- (a) the nearest relative, if there is one, of the person or patient or a relative nominated by the person or patient;
- (b) the person's or patient's guardian, if any;
- (c) any personal friend or friends of the person or patient, up to 2 in number, who are known as his or her personal friends.

(2) The medical superintendent must not, however, give notice to any person of an application under section 185 unless the person the subject of the application consents.

(30) Section 191:

Omit the section, insert instead:

Inquiry

191. (1) On an application under section 185 or 188, the Tribunal must, as soon as practicable, hold an inquiry to determine the matters set out in the section concerned.

(2) The medical superintendent must ensure that, so far as is reasonably practicable, the person or patient the subject of the application is, when appearing before the Tribunal, dressed in street clothes.

(31) Section 192 (**Matters to be checked by Tribunal**):

In section 192 (a), after "given", insert "(if required)".

(32) Section 193 (**Matters which must be considered by Tribunal**):

Omit section 193 (l), insert instead:

(1) In the course of the inquiry, the Tribunal must consider the certificates of the medical practitioners under section 185 or 188 concerning the person or patient the subject of the application and must consider the person's or patient's views

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

about the treatment and such other information as may be placed before the Tribunal.

(33) Section 194:

Omit the section, insert instead:

Result of inquiry

194. (1) The Tribunal may, after holding an inquiry on an application under section 185 or 188 concerning a person or patient, determine that the person or patient:

- (a) is capable of giving informed consent to the administration to the person or patient of a treatment to which this Division applies; and
- (b) has given that consent.

(2) After holding an inquiry on an application under section 188 concerning the administration of electro convulsive therapy to a person or patient, the Tribunal may determine:

- (a) that the person or patient is incapable of giving informed consent to the administration to the person or patient of electro convulsive therapy, or is capable of giving that consent but has refused, or has neither consented nor refused, to have the treatment administered to the person or patient; and
- (b) that, after considering the medical opinions and any other information placed before it, the Tribunal is satisfied the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the person or patient.

Explanatory note

Currently the Act specifies the circumstances in which electro convulsive therapy and other prescribed treatments may be administered without consent to an involuntary patient (in emergencies or after an inquiry by the Mental Health Review Tribunal). The Act provides that in any other case such treatment is to be given only after informed consent is given by the patient.

Item (26) enables the medical superintendent to apply to have the Tribunal determine whether a person who is not detained in a hospital has given informed consent to electro convulsive therapy or any other prescribed treatment.

**SCHEDULE I—AMENDMENT OF MENTAL HEALTH ACT
1990—continued**

Items (27) and (28) simplify procedures relating to treatment of patients by omitting the formal requirement for the medical superintendent concerned to form an opinion as to whether a patient is able to give informed consent to the treatment before the matter goes to the Tribunal. That question is to be determined by the Tribunal. Items (29)–(31) and (33) make consequential amendments.

Item (32) requires the Tribunal to take into consideration, when deciding whether to authorise electro convulsive therapy or other prescribed treatments, the views of the person as well as the views of the medical practitioners concerned and any other relevant information placed before it. At present the Tribunal is not required to consider the person's views. The Tribunal is to make its decision only on the material placed before it.

Amendments: hospital administration and management

(34) Section 209 (**Appointment of medical superintendents**):

Omit “may”, insert instead “must”.

(35) Section 219:

Omit the section, insert instead:

Medical services in authorised hospitals

219. The holder of a licence must make such arrangements as may be approved by the Director-General for the provision of medical services to patients in the authorised hospital.

(36) Section 222:

Omit the section, insert instead:

Appointment of deputy medical superintendent

222. (1) The holder of a licence may appoint a medical practitioner as deputy medical superintendent of the authorised hospital.

(2) The appointment of the medical practitioner must be approved by the Director-General before it takes effect.

(37) Section 231 (**Access to be given to official visitors and other matters**):

(a) After “superintendent”, insert “of a hospital (other than an authorised hospital), the administrator of an authorised hospital”.

(b) In section 231 (c), after “superintendent’s”, insert “, administrator’s”.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(c) At the end of section 231, insert:

(2) The administrator of an authorised hospital must, at the end of each month, report in writing to the medical superintendent as to the functions exercised under this section by the administrator during that month.

(38) Section 293 (**Information as to follow-up care after discharge**):

(a) After “superintendent”, insert “or the administrator (if it is an authorised hospital)”.

(b) At the end of section 293, insert:

(2) The administrator of an authorised hospital must, at the end of each month, report in writing to the medical superintendent as to the functions exercised under this section by the administrator during that month.

Explanatory note

The Act provides for the establishment, administration and management of hospitals (both private and public) which treat persons who are mentally ill. In the Act, private hospitals are referred to as authorised hospitals. They are licensed under the Act.

Item (34) makes it mandatory that the Director-General of the Department of Health appoint a medical superintendent for a hospital that is not an authorised hospital (a public hospital).

Item (35) replaces specific requirements of the Act relating to the number of medical practitioners in authorised hospitals with a wider discretion for the licence holder to provide such medical services as the Director-General may approve.

Item (36) provides that a deputy medical superintendent may, but need not, be appointed for an authorised hospital and that such an appointment must be approved by the Director-General before it is made. Currently, the hospital must have a deputy medical superintendent.

Items (37) and (38) enable an administrator of an authorised hospital to perform duties now imposed on the medical superintendent, relating to enabling access to official visitors and the provision of information to patients about follow up care.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

Other amendments

(39) Section 234A:

After section 234, insert:

Official visitors not personally liable

234A. A matter or thing done or omitted by an official visitor does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the official visitor personally to any action, liability, claim or demand.

Explanatory note

Item (39) provides for the protection of official visitors to hospitals from personal liability for acts done in good faith in carrying out their duties under the Act.

(40) Section 288 (**Legal representation of mentally ill persons and other persons**):

After “mental illness” where firstly occurring, insert “or a developmental disability of mind”.

Explanatory note

Item (40) makes it clear that persons suffering from a developmental disability of the mind are able to obtain legal representation and to instruct legal representatives in respect of matters arising under the Act.

(41) Schedule 1 (**Dictionary of terms used in the Act**):

In paragraph (a) of the definition of “forensic patient”, after “10 (3) (c)”, insert “, 14”.

Explanatory note

Item (41) amends the definition of “forensic patient” (in the Dictionary of terms used in the Mental Health Act 1990—Schedule 1) to include persons who have been found unfit to be tried for an offence.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(42) Schedule 2:

Omit the Schedule, insert instead:

**SCHEDULE 2—MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON**
(Secs. 21, 22)

MENTAL HEALTH ACT 1990

PART 1

I, (Medical Practitioner/accredited person)
(name in full—use block letters)

of certify that
on 19.....
immediately before or shortly before completing this
certificate,

at
(state place where examination/observation took place)

I personally examined/personally observed..
..... for a period of
(name of person in full)

.....
(state length of examination/observation)

I certify the following matters:

1. I am of the opinion that the person examined/observed by me is a mentally ill person suffering from mental illness/or a mentally disordered person and that there are reasonable grounds for believing the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

- ***(a)** (in the case of any mentally ill person):
 - (i) for the person’s own protection from serious physical harm; or
 - (ii) for the protection of others from serious physical harm; or
- ***(b)** (in the case of a mentally ill person who is suffering from mental illness which is characterised by the presence in the person of the symptom of sustained disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the presence of that symptom) for the person’s own protection from serious financial harm or serious damage to the person’s reputation; or
- ***(c)** in the case of a mentally disordered person:
 - (i) for the person’s own protection from serious physical harm; or
 - (ii) for the protection of others from serious physical harm.

2. I have satisfied myself, by such inquiry as is reasonable having regard to the circumstances of the case, that the person’s involuntary admission to and detention in a hospital are necessary and that no other care of a less restrictive kind is appropriate and reasonably available to the person.

3. Incidents and/or abnormalities of behaviour and conduct (a) observed by myself and (b) communicated to me by others (state name, relationship and address of each informant) are:

- (a)
-
-
-
-

* delete whichever is not applicable

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(b)
.....
.....
.....

4. The general medical and/or surgical condition of the person is as follows:

.....
.....
.....
.....

5. The following medication (if any) has been administered for purposes of psychiatric therapy or sedation:

.....
.....
.....
.....

6. I am not a near relative of the person.

7. I have/do not have a pecuniary interest, directly or indirectly, in an authorised hospital. I have/do not have a near relative/partner/assistant who has such an interest. Particulars of the interest are as follows:

.....
.....
.....
.....

Made and signed this.. day of 19.....

Signature:

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

PART 2

If the assistance of a Police Officer is required, this part of the Form should be completed.

YOU SHOULD NOT REQUEST THIS ASSISTANCE UNLESS IT IS NECESSARY AND THERE ARE NO OTHER MEANS OF TAKING THE PERSON TO HOSPITAL REASONABLY AVAILABLE.

I am of the opinion, in relation to

.....

(name of person in full)

- (a) that the condition of the person is such that the assistance of a Police Officer is required in order to take the person to a hospital; and
- (b) that no other means of taking the person to a hospital are reasonably available.

Made and signed19

Signature:.....

NOTES:

- 1. Chapter 3 of the Mental Health Act 1990 states:

Criteria for involuntary admission etc as mentally ill person or mentally disordered person

8. A person is a mentally ill person or a mentally disordered person for the purpose of:

- (a) the involuntary admission of the person to a hospital or the detention of the person in a hospital under this Act; or
- (b) determining whether the person should be subject to a community treatment order or be detained or continue to be detained involuntarily in a hospital,

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

if, and only if, the person satisfies the relevant criteria set out in this Chapter.

Mentally ill persons

9. (1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm; or
- (b) for the protection of others from serious physical harm,

and a person is also a mentally ill person if the person is suffering from mental illness which is characterised by the presence in the person of the symptom of a severe disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the presence of that symptom and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious financial harm or serious damage to the person's reputation.

(2) In considering whether a person is a mentally ill person, the continuing condition of the person is to be taken into account.

(3) In this section, "damage to the person's reputation" includes damage to the person's reputation among those with whom the person has important personal relationships, where the damage is likely to cause lasting or irreparable harm to any such relationship.

Mentally disordered persons

10. A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm; or
- (b) for the protection of others from serious physical harm.

Certain words or conduct may not indicate mental illness or disorder

11. (1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:

- (a) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief;

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

- (b) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy;
- (d) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation;
- (e) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity;
- (f) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity;
- (g) that the person engages in or has engaged in sexual promiscuity;
- (h) that the person engages in or has engaged in immoral conduct;
- (i) that the person engages in or has engaged in illegal conduct;
- (i) that the person has developmental disability of mind;
- (k) that the person takes or has taken alcohol or any other drug;
- (l) that the person engages in or has engaged in anti-social behaviour.

(2) Nothing in this Chapter prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind.

2. In addition to matters ascertained as a consequence of personally examining or observing the person, account may be taken of other matters not so ascertained where those matters:

- (a) arise from a previous personal examination of the person; or
- (b) are communicated by a reasonably credible informant.

3. In the Mental Health Act 1990 “mental illness” is defined as follows:

mental illness means a condition which seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—continued

- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a)–(d).

4. In the Mental Health Act 1990 “near relative” is defined as follows:
near relative, in relation to a person, means a parent, brother, sister or child or the spouse of the person and such other person or persons as may be prescribed as a near relative of the person.

5. For admission purposes, this certificate is valid only for a period of 5 days, in the case of a person who is a mentally ill person, or 1 day, in the case of a person who is a mentally disordered person, after the date on which the certificate is given.

Explanatory note

Item (42) replaces the current form of certificate for use for the detention of persons in a hospital with one in simpler language. Part 2 of the new form of Certificate clearly states that police assistance to take the person concerned to hospital should only be requested if it is necessary and no other means of taking the person to hospital are reasonably available.

(43) Schedule 7 (Savings, transitional and other provisions):

- (a) After clause 2 (l), insert:
 - (1A) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:
 - Mental Health (Amendment) Act 1994
- (b) From clause 2 (4), omit “this Act”, insert instead “the Act concerned”.
- (c) After clause 38, insert:

**Part 6—Provisions consequent on Mental Health
(Amendment) Act 1994**

Detention of persons in hospitals

39. Sections 35, 38 and 40, as amended by the Mental Health (Amendment) Act 1994, do not apply to any person taken to a hospital before the commencement of the relevant amendment and not released before that commencement.

**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued***

Electro convulsive therapy and prescribed treatments

40. Sections 188, 190, 191, 193 and 194, as amended by the Mental Health (Amendment) Act 1994, do not apply to any person in respect of whom an application is made under section 188 or 189, and not finally determined, before the commencement of the relevant amendment.

Explanatory note

Item (43) makes amendments of a savings or transitional nature consequent on the enactment of the proposed Act.

**SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990**

(Sec. 4)

Section 33 (Mentally ill persons):

- (a) Omit section 33 (1) (a) and (b), insert instead:
 - (a) may order that the defendant be taken by a police officer to, and detained in, a hospital for assessment; or
 - (b) may order that the defendant be taken by a police officer to, and detained in, a hospital for assessment and that, if the defendant is found on assessment at the hospital not to be a mentally ill person or mentally disordered person, the person be brought by a police officer back before the court; or
 - (c) may discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.
- (b) After section 33, insert:
 - (5) The regulations may prescribe the form of an order under this section.

Explanatory note

The amendment extends the orders that a Magistrate may make in proceedings if it appears to the Magistrate that the defendant is mentally ill. Currently, the Magistrate may order the person be detained in a hospital for assessment or be discharged unconditionally or subject to conditions, into the care of a responsible person. The amendment enables the Magistrate to order that the defendant be brought back before

SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990—*continued*

the court if, on assessment at the hospital, the defendant is found not to be a mentally ill person or a mentally disordered person. Schedule 1 (11) makes a consequential amendment to the Mental Health Act 1990 to enable a medical superintendent to detain a person until apprehended by a police officer, if the person is subject to an order to be brought back before the Magistrate and is not admitted as an involuntary patient.

*[Minister's second reading speech made in—
Legislative Assembly on 14 April 1994
Legislative Council on 10 May 1994]*