

NORFOLK



ISLAND

# MENTAL HEALTH ACT 1996

[Consolidated as at 26 February 2013  
on the authority of the Administrator  
and in accordance with  
the *Enactments Reprinting Act 1980*]

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## Mental Health Act 1996

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An Act to provide for the treatment, care, control and protection of mentally dysfunctional persons.

**BE IT ENACTED** by the Legislative Assembly of Norfolk Island as follows —

### PART 1 — PRELIMINARY

#### Short title

1. This Act may be cited as the *Mental Health Act 1996*.

#### Commencement

2. (1) Section 1 and this section commence on the day on which notification of Assent is published in the Gazette.  
(2) The remaining provisions commence on a day or days fixed by the Administrator by notice in the Gazette.

#### Objects

3. (1) The objects of this Act are as follows:
  - (a) to provide treatment, care and protection for mentally dysfunctional persons in a manner that is least restrictive of their human rights;
  - (b) to provide for mentally dysfunctional persons to receive treatment, care and protection;
  - (c) to provide the dignity and self respect of mentally dysfunctional persons;
  - (d) to ensure that mentally dysfunctional persons have the right to receive treatment, care and protection in an environment that is the least restrictive and intrusive, having regard to their needs and the need to protect other persons from physical and emotional harm.
- (2) A person performing a function or exercising a power under this Act, or pursuant to an order of the Tribunal, in relation to a mentally dysfunctional person shall endeavour to ensure that any restrictions on the person's personal freedom and any derogation of that person's dignity and self-respect are kept to the minimum necessary for the proper care and protection of the person and the protection of the public.



## Interpretation

4. In this Act, unless the contrary intention appears —
- “Advocate” means the Mental Health Advocate appointed under section 38;
- “approved” means approved in writing by the Minister;
- “custodial order” means —
- (a) an order of a court under the *Criminal Law Act 1960*, Part 11A;
  - (b) or an order of the Tribunal under section 30 or 30A;
- “doctor” means a person who is registered under the *Medical Practitioners Registration Act 1983*;
- “Hospital” means the Norfolk Island hospital;
- “interstate custodial order” means an order under Part 5A;
- “Medical Superintendent” means the person appointed under section 23A of the *Norfolk Island Hospital Act 1985* as the Medical Superintendent and includes a person exercising the powers and performing the functions of the Medical Superintendent during the absence of the Medical Superintendent;
- “mental dysfunction” means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion;
- “mental health order” includes an order of a kind described in section 30 or 37F made by the Tribunal;
- “mental illness” means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms —
- (a) delusions;
  - (b) hallucinations;
  - (c) serious disorder of thought form;
  - (d) a severe disturbance of mood;
  - (e) sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d);

“police officer” means a person who is a member of the police force for the purposes of the *Police Act 1931*;

“psychiatrist” means a medical practitioner who holds postgraduate qualifications in psychiatry and is —

- (a) registered as a medical practitioner under the *Medical Practitioners Registration Act 1983*; or
- (b) is registered as a medical practitioner under the law of a State or a Territory and practises as a psychiatrist in their place of registration;

“relative”, in relation to a person, means a spouse, parent, guardian, grandparent, uncle, aunt, brother, sister, half-brother, half-sister, cousin or child (being a child over the age of 18 years) of the person;

“spouse”, in relation to a person, includes a person who is not legally married to the person but who lives with the person on a bonafide domestic basis;

“Tribunal” means the Mental Health Tribunal established by subsection 6(1).

#### **Persons not to be regarded as mentally dysfunctional**

5. For the purposes of this Act, a person is not to be regarded as mentally dysfunctional merely because of any of the following:

- (a) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular political opinion or belief;
- (b) that the person expresses or refuses or fails to express, or has expressed or has 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 has refused or failed to express, a particular philosophy;
- (d) that the person expresses or refuses or fails to express, or has expressed or has 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 has 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 has 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;
- (j) that the person engages in or has engaged in illegal conduct;
- (k) that the person takes or has taken alcohol or any other drug;
- (m) that the person engages in or has engaged in antisocial behaviour.

## PART 2 — MENTAL HEALTH TRIBUNAL

### Mental Health Tribunal

6. (1) The Mental Health Tribunal is established.
- (2) The Tribunal has the following functions:
- (a) to hear and determine applications for the release of persons involuntarily detained under Part 3;
  - (b) to make orders in respect of the treatment, care, control and protection of mentally dysfunctional persons;
  - (ba) to order (if necessary) a psychiatric or psychological assessment of a person who is the subject of a proceeding;
  - (bb) to determine the fitness to plead of persons charged with criminal offences, to make orders in respect of the treatment, care, control, rehabilitation and protection of persons found unfit to plead, to review the welfare of those persons and to order (if appropriate) the release of those persons subject to conditions (if any);
  - (bc) to make orders in respect of the treatment, care, control, rehabilitation and protection of persons found not guilty of criminal offences on the ground of mental illness, to review the welfare of those persons and to order (if appropriate) the release of those persons subject to conditions (if any);
  - (bd) to make orders in respect of the treatment, care, control, rehabilitation and protection of persons found guilty of criminal offences on the ground of mental illness, to review the welfare of those persons and to order (if appropriate) the release of those persons subject to conditions (if any);
  - (c) such other functions as may be conferred on the Tribunal by or under this or another Act.

### Powers

7. The Tribunal may do all things necessary or convenient to be done in connection with the performance of its functions.

### Membership

8. (1) The Tribunal shall consist of —
- (a) a President who shall be a Magistrate appointed under the *Court of Petty Sessions Act 1960* or a person enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years; and
  - (b) a doctor or a person eligible to be registered as a doctor; and
  - (c) another member of the community.
- (2) The members of the Tribunal shall be appointed in writing by the Minister and hold office for the period not exceeding 2 years specified in the instrument of appointment but are eligible for re-appointment.
- (3) A member of the Tribunal may resign in writing signed by the member and given to the Minister.



**Acting membership**

9. (1) The Minister may appoint a person to act as a member of the Tribunal —

- (a) during a vacancy in the office of a member; or
- (b) during any period or during all periods when the member is absent from duty or from Norfolk Island or is, for any reason, unable to perform the duties of the office.

(2) A person shall not be appointed to act as the President or the member referred to in paragraph 8(1)(b) unless the person is eligible to be appointed as that member.

**Termination of appointment**

10. The Minister may terminate the appointment of a member of the Tribunal for misbehaviour or physical or mental incapacity.

**Proceedings of the Tribunal**

11. (1) The Tribunal shall meet as often as it considers necessary for the performance of its functions and at such other times as the Minister requires.

(2) Proceedings of the Tribunal shall be held at such places as the President determines.

(3) The President shall preside at all proceedings of the Tribunal at which he or she is present but if the President is absent from a proceeding the members present shall appoint one of the members present to preside at that meeting.

(4) The quorum at a proceeding of the Tribunal is 2 members.

(5) The Tribunal shall cause minutes of its proceedings to be recorded and kept and shall, not later than 7 days after a meeting, send a copy of the minutes of the meeting to the Minister.

(6) A proceeding of the Tribunal in respect of a person shall be in private unless the Tribunal otherwise directs.

(7) Subject to this Act, the procedures at a proceeding of the Tribunal shall be as determined by the Tribunal.

(8) The Tribunal must not meet to consider any matter concerning the mental illness of a person that has been referred to the Tribunal by a court under Part 4A or otherwise unless it has before it a report of a psychiatrist that states that in the opinion of the psychiatrist the person is or is not suffering from a mental illness.

**Appearance at proceedings**

12. (1) The following persons are entitled to attend proceedings of the Tribunal and make representations:

- (a) the person who is the subject of the proceedings;
- (b) the applicant (if any);
- (c) the Advocate;
- (d) where appropriate, the doctor who ordered detention under section 25;
- (e) if the Tribunal is considering a report as referred to in subsection 11(8), the psychiatrist who made the report.

(2) Other persons may appear at proceedings of the Tribunal only by leave of the Tribunal.

### Natural justice

**13.** The Tribunal is bound by the rules of natural justice.

### Evidence

**14. (1)** In a proceeding, the Tribunal is not bound by the rules of evidence but may inform itself on any matter relevant to a proceeding in such manner as it thinks fit.

**(2)** Evidence in a proceeding may be given orally or in writing.

**(3)** For the purposes of a proceeding, the Tribunal may take evidence on oath or affirmation and for that purpose the President may —

(a) require a person appearing before the Tribunal to take an oath or make an affirmation; and

(b) administer an oath or affirmation to such a person.

**(4)** For the purposes of a proceeding, the President may require a person appearing before the Tribunal —

(a) to answer a question relevant to the proceeding; or

(b) to produce a document relevant to the proceeding.

**(5)** Where the President is satisfied that a person is capable of providing information or producing a document relevant to a proceeding, the President may, by written notice given to the person, require the person —

(a) to provide the information to the President in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or

(b) to produce the document to the President.

**(6)** A notice under subsection (5) shall state —

(a) the place at which the information or document is to be provided or produced to the President; and

(b) the time at which, or the period within which, the information or document is to be so provided or produced.

**(7)** Where the President is satisfied that a person has information relevant to a proceeding, the President may, by written notice given to the person, require the person to attend before the Tribunal at a time and place specified in the notice and to answer questions relevant to the proceeding.

**(8)** A person shall not, without reasonable excuse, fail to —

(a) provide information or produce a document when required to do so under subsection (5); or

(b) answer a question under subsection (7).

Penalty: 10 penalty units or imprisonment for 6 months, or both.

**Admissibility of evidence in other proceedings**

**15.** A statement or disclosure made, or a document or other thing produced, by a person in the course of a proceeding, or any information, document or thing obtained as a direct or indirect consequence of the making of the statement or disclosure, or of the production of the first-mentioned document or thing, is not admissible in evidence in any civil or criminal proceeding except —

- (a) a proceeding under this Act;
- (b) a proceeding in respect of an appeal to the Supreme Court under section 41; or
- (c) a proceeding for an offence against this Act.

**Form of orders**

**16.** An order of the Tribunal —

- (a) shall be in writing signed by the members constituting the Tribunal when the order is made; and
- (b) shall specify the persons on whom a copy of the order is to be served.

**Obtaining reasons for decisions**

**17. (1)** Where —

- (a) the Tribunal makes a decision; and
- (b) a person who is entitled to appeal to the Supreme Court against the decision requests the President, in accordance with subsection (3), for a statement of reasons in respect of the decision,

the President shall give a written statement of those reasons to the person as soon as practicable but, in any case, within 7 days after the day on which the request is received by the President.

**(2)** A request for a statement of reasons shall be in writing given to the President within 28 days after the day on which the decision was made.

**(3)** A statement of reasons shall —

- (a) set out the Tribunal's findings on material questions of fact;
- (b) refer to the evidence or other material on which those findings were made; and
- (c) give the Tribunal's reasons for the decision.

**Reasons for decisions in respect of referrals by court under Criminal Law Act 1960**

**17A.** When the Tribunal makes a determination for the purposes of Part 4A it must take account of the report of the psychiatrist before it under subsection 11(8) and if it makes a decision that is contrary to a recommendation or opinion of the psychiatrist, must also state the reasons for so doing.

**Secrecy**

**18. (1)** A person who is, or has been, a member of the Tribunal, or an officer or employee of the Public Service shall not, either directly or indirectly, except for the purposes of this Act —

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the person in the performance of a function under this Act; or
- (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: 25 penalty units or imprisonment for 12 months, or both.

**Assistance for Tribunal**

**19. (1)** The Tribunal may appoint a lawyer, doctor or any other person with appropriate expertise to assist in relation to the performance of its functions.

**(2)** A person appearing at a proceeding of the Tribunal may be represented by an agent or lawyer.

**Contempt of Tribunal**

**20.** A person shall not —

- (a) obstruct or hinder the Tribunal or a member of the Tribunal in the performance of the functions of the Tribunal; or
- (b) disrupt a proceedings of the Tribunal.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

**PART 3 — EMERGENCY DETENTION AND CARE****Apprehension**

**21. (1)** Where a police officer believes on reasonable grounds that —

- (a) a person is mentally dysfunctional and, as a consequence, requires immediate treatment or care; and
- (b) the person has refused to receive that treatment or care; and
- (c) detention is necessary for the person's own health or safety or for the protection of members of the public,

the police officer may apprehend the person and take him or her to the Hospital or another approved place.

**(2)** Where a doctor believes on reasonable ground that —

- (a) a person is mentally dysfunctional and, as a consequence, requires immediate treatment or care; and
- (b) the person has refused to receive that treatment or care; and
- (c) detention is necessary for the person's own health or safety or for the protection of members of the public; and
- (d) adequate treatment or care cannot be provided in a less restrictive environment,

the doctor may apprehend the person and take him or her to the Hospital or another approved place.

- (3) For the purposes of subsections (1) and (2) a police officer or doctor —
- (a) may use such force and assistance as is reasonably necessary to apprehend the person and take him or her to the Hospital or approved place; and
  - (b) if there are reasonable grounds for believing that the person is at certain premises, may enter those premises using such force and with such assistance as is necessary and reasonable.

### **Detention**

**22.** Where a person is taken to the Hospital or an approved place under section 21, the Medical Superintendent shall detain the person at the Hospital or place and while the person is so detained —

- (a) may keep the person in such custody as the Medical Superintendent thinks appropriate; and
- (b) may subject the person to such confinement as is necessary and reasonable —
  - (i) to prevent the person from causing harm to himself or herself or to another person; or
  - (ii) to ensure that the person remains in custody; and
- (c) may subject the person to such restraint (other than confinement) as is necessary and reasonable —
  - (i) to prevent the person from causing harm to himself or herself or to another person; or
  - (ii) to ensure that the person remains in custody.

### **Statement of action taken**

**23. (1)** A police officer or doctor shall, as soon as practicable after taking a person to the Hospital or an approved place under section 21, prepare and give to the Medical Superintendent a written statement containing a description of the action taken under that section, including the following details:

- (a) the name and address (if known) of the person taken to the Hospital or place;
- (b) the date and time when the person was taken to the Hospital or place;
- (c) reasons for taking the action;
- (d) the extent of the force or assistance used to enter any premises, or to apprehend the person and take him or her to the Hospital or place.

**(2)** The Medical Superintendent shall place the statement provided under subsection (1) with the clinical records of the person whom it concerns.

### **Examination by doctor**

**24.** The Medical Superintendent shall ensure that a person taken to the Hospital or place under section 21 is examined by a doctor within 4 hours of the person arriving at the facility.

**Involuntary detention may be authorised**

**25. (1)** Where the doctor who examines a person under section 24 has reasonable grounds for believing that —

- (a) the person is mentally dysfunctional and, as a consequence, requires immediate treatment or care; and
- (b) the person has refused to receive that treatment or care; and
- (c) detention is necessary for the person's own health or safety or for the protection of members of the public; and
- (d) adequate treatment or care cannot be provided in a less restrictive environment,

the doctor may authorise the involuntary detention and care of the person at the Hospital or approved place for a period not exceeding 3 days.

**(2)** Where —

- (a) a person is detained under subsection (1); and
- (b) an application for further detention is made before the period of detention expires,

the Tribunal may order that, on the expiration of that period, the person be so detained for the further period (not exceeding 7 days) specified in the order.

**(3)** The Tribunal shall not make an order under subsection (2) unless it has notified the Mental Health Advocate and considered any representations made to it by the Advocate.

**Transfer to authorised Australian or New Zealand mental health facility**

**26. (1)** Where a person is detained under section 22 or 25 and an application is made for the person to be transferred to an authorised Australian or New Zealand mental health facility for treatment, the Tribunal may order that the person be so transferred.

**(2)** The Tribunal shall not make an order under subsection (1) unless it is satisfied that adequate treatment or care cannot be provided in Norfolk Island.

**(3)** For the purposes of this Part “authorised Australian or New Zealand mental health facility” means a facility that is authorised under the law of a State or Territory or New Zealand to treat mentally dysfunctional persons.

**(4)** The Tribunal shall not make an order under subsection (1), unless it has notified the Mental Health Advocate and the nearest relative of the person and considered any representations made to it by the Advocate or the relative.

**(5)** An order made under subsection (1) may specify that a person being transferred is to be accompanied by an escort who may subject the person to such restraint and administer such specified drugs as are necessary and reasonable to prevent the person from causing harm to himself or herself or to another person.

**Certain persons to be notified**

**27. (1)** The doctor shall, after authorising the detention of a person under subsection 25(1), notify the Mental Health Advocate and the Tribunal of —

- (a) the name of the person detained; and
- (b) the reason for authorising the involuntary detention and care.

**(2)** Where the person detained under subsection 25(1) is a minor, the doctor shall also notify a relative of the person.

**Treatment during detention**

**28. (1)** The Medical Superintendent shall ensure that during the period of detention under section 25 —

- (a) any custody under which the person detained is kept; and
- (b) any confinement or other restraint to which the person detained is subjected; and
- (c) any treatment administered to the person detained,

is the minimum necessary to prevent any immediate and substantial risk of the person detained causing harm to himself or herself or to another person.

**(2)** The Medical Superintendent shall ensure that during the period of detention the person detained has adequate opportunity to contact the Mental Health Advocate.

**Orders for release**

**29.** If satisfied that the detention of a person under section 25 is no longer justified, the Tribunal may order the release of the person before the period of detention authorised under that section expires.

**PART 4 — MENTAL HEALTH ORDERS****Mental health orders**

**30. (1)** The Tribunal may, on application, make the following mental health orders:

- (a) an order for a person to be given specified treatment;
- (b) an order for a person to undertake a specified training, counselling, or therapeutic program;
- (c) if the Tribunal considers a person is, or is likely to be, a danger to himself or herself or to the community, an order prohibiting the person from engaging in specified conduct;
- (d) an order requiring a person to reside in a specified place subject to specified conditions (if any).

**(2)** The Tribunal may make an involuntary psychiatric treatment order in respect of a person if —

- (a) the person has a mental illness; and
- (b) the Tribunal has reasonable grounds for believing that, by reason of that illness, the person is likely to do serious harm to himself or herself or others, or is likely to suffer serious mental or physical deterioration unless subject to involuntary psychiatric treatment; and

- (c) the Tribunal is satisfied that psychiatric treatment is likely to reduce the harm referred to in paragraph (b) and result in an improvement in his or her psychiatric condition; and
- (d) the treatment can not be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

(3) An order under subsection (2) may specify a health facility or other facility to which the person to whom the order relates may be taken.

(4) A mental health order made in respect of a person may —

- (a) in the case of a psychiatric treatment order — specify that the person is required to do either or both of the following —
  - (i) to undergo psychiatric treatment, other than convulsive therapy or psychiatric surgery; or
  - (ii) to undertake a counselling, training, therapeutic or rehabilitation program.

### **Restriction order**

**30A. (1)** The Tribunal may, in addition to making an order under subsection 30(2), make a restriction order in respect of a person if satisfied that, in the interests of his or her health or safety or public safety, the person should not be discharged from the order under subsection 30(2) unless the Tribunal has reviewed that order.

(2) A restriction order may require the person the subject of the order —

- (a) if the person has a mental illness — to reside at a specified place; or
- (b) not to approach a specified person or specified place or undertake specified activities.

### **Mentally dysfunctional persons entitled to apply**

**31. (1)** A person may make an application for a mental health order on his or her own behalf if —

- (a) the person believes himself or herself to be unable, because of mental dysfunction —
  - (i) to make reasonable judgments about matters relating to his or her own health or safety; or
  - (ii) to do anything necessary for his or her own health or safety; and, as a result, his or her own health or safety is, or is likely to be, substantially at risk; or
- (b) the person believes himself or herself to be or to be likely to be, because of mental dysfunction, a danger to the community.

(2) An application under subsection (1) shall be accompanied by a statutory declaration setting out detailed reasons as to why the applicant holds the belief referred to in that subsection.



**Applications by other persons**

**32. (1)** A person may make an application for a mental health order in respect of another person whom the applicant believes on reasonable grounds —

- (a) is unable, because of mental dysfunction —
  - (i) to make reasonable judgments about matters relating to his or her health or safety; or
  - (ii) to do anything necessary for his or her health or safety;and, as a result, the person's health or safety is, or is likely to be, substantially at risk; or
- (b) is or is likely to be, because of mental dysfunction, a danger to the community.

**(2)** An application under subsection (1) shall be accompanied by a statutory declaration setting out detailed reasons as to why the applicant holds the belief referred to in that subsection.

**(3)** If an applicant under this section has reasonable grounds for believing that the appearance of the person who is the subject of the application before the Tribunal is likely to increase substantially —

- (a) the risk to the person's health or safety; or
- (b) the danger to the community;

the applicant shall set out those grounds in the statutory declaration.

**Pre-condition to making order**

**33.** The Tribunal shall not make a mental health order in respect of a person unless —

- (a) there is currently in force in respect of that person an order of a similar nature to a mental health order issued by a tribunal or mental health authority of an Australian State or Territory or New Zealand; or
- (b) there is a recommendation made by a person with professional qualifications in psychiatry that such an order be made.

**Matters to be taken into account**

**34.** In making a mental health order in respect of a person, the Tribunal shall take into account the following matters:

- (a) the terms of the order (if any) referred to in paragraph 33(a);
- (b) the recommendation (if any) of the person referred to in paragraph 33(b);
- (c) the views and wishes of the person so far as they can be ascertained;
- (d) the views of all persons appearing at the proceedings;
- (e) that the person's welfare and interests should be appropriately protected;
- (f) that the person's rights should not be interfered with except to the least extent necessary;
- (g) that the person should be encouraged to look after himself or herself;
- (h) that, as far as possible, the person should live in the general community and join in community activities;
- (j) that any restrictions placed on the person should be the minimum

- necessary for the safe and effective care of the person;
- (k) any relevant medical history of the person;
- (l) any other matters it considers relevant.

### **Involuntary orders**

**35.** The Tribunal may make a mental health order in respect of a person without the person's consent if the Tribunal is satisfied that —

- (a) the person needs to undergo treatment, to undertake a program, to be given care or support, or to be subject to prohibitions or conditions; and
- (b) the order is necessary for the person's own protection or for the protection of the community; and
- (c) the person —
  - (i) has refused to consent to the order; or
  - (ii) is incapable of weighing for himself or herself the considerations involved in making a decision whether to consent to the order; and
- (d) the treatment, program, care, support, prohibitions or conditions cannot be provided or imposed adequately in a less restrictive or intrusive environment.

### **Duration of orders**

**36.** Subject to section 37, a mental health order made in respect of a person has effect for the period (being no longer than 12 months) specified in the order.

### **Review, variation and revocation**

**37. (1)** The Tribunal may, on application or of its own motion, review the mental health orders in force in respect of a person.

**(2)** If, following a review —

- (a) the Tribunal is satisfied that a person is no longer mentally dysfunctional, the Tribunal shall revoke all of those orders; or
- (b) the Tribunal is satisfied that a person remains mentally dysfunctional but —
  - (i) the person's health or safety would not be, and would be unlikely to be, substantially at risk; and
  - (ii) the person is not, and is not likely to be, a danger to the community and is satisfied that it is otherwise appropriate to do so, the Tribunal may —
    - (iii) vary or revoke any of those orders; or
    - (iv) make additional mental health orders in respect of the person; or
- (c) the Tribunal is satisfied that it would be appropriate to do so, the Tribunal may —
  - (i) vary or revoke any of those orders; or
  - (ii) make additional mental health orders in respect of the person.

**(3)** The Tribunal shall not make additional mental health orders in respect of a person unless it has considered a recommendation in respect of that person made by a person with professional qualifications in psychiatry.

**PART 4A — REFERRALS BY COURTS UNDER CRIMINAL LAW ACT 1960****Determination of fitness to plead**

**37A. (1)** In this Part —

“order to determine fitness” means an order of the Supreme Court or the Court of Petty Sessions under the *Criminal Law Act 1960*, part 11A requiring a person to submit to the jurisdiction of the Tribunal to enable the Tribunal to determine whether or not the person is fit to plead to a charge laid against the person.

“relevant court”, in relation to a person subject to an order to determine fitness, means the court that made the order.

**(2)** Following such inquiry as the Tribunal thinks appropriate, and with regard to the report before it under subsection 11(8), the Tribunal shall determine, on the balance of probabilities —

- (a) whether or not a person who is subject to an order to determine fitness is fit to plead to the charge; and
- (b) if the Tribunal determines that the person is unfit to plead to the charge — whether or not the person is likely to become fit within 12 months after the determination is made.

**(3)** The Tribunal shall make a determination that a person is unfit to plead to a charge if satisfied that the person’s mental processes are disordered or impaired to the extent that the person is unable —

- (a) to understand the nature of the charge; or
- (b) to enter a plea to the charge and to exercise the right to challenge jurors or the jury; or
- (c) to understand that the proceedings are an inquiry as to whether the person committed the offence; or
- (d) to follow the course of the proceedings; or
- (e) to understand the substantial effect of any evidence that may be given in support of the prosecution; or
- (f) to give instructions to his or her legal representative.

**(4)** A person is not unfit to plead only because he or she is suffering from memory loss.

**(5)** The Tribunal must notify the relevant court of its determination and may make recommendations to the court about how the person should be dealt with.

**(6)** The Tribunal must notify the relevant court if its determination is contrary to a recommendation or opinion of the psychiatrist whose report is has had before it.

**Review of people temporarily unfit to plead**

**37B. (1)** This section applies if the Tribunal makes a determination (the “initial determination”) under section 37A that a person is unfit to plead to a charge but is likely to become fit to plead to the charge within 12 months after the initial determination is made (the “12 month period”).

**(2)** The Tribunal may (on application or on its own initiative) review the person’s fitness to plead at any time before the end of the 12 month period.

(3) However, if the Tribunal has not reviewed the person's fitness to plead within 6 months after the initial determination was made, the Tribunal must review it as soon as practicable (but within 30 days) after that time.

(4) If, before the end of the 12 month period, the person has not been found fit to plead, the Tribunal must review the person's fitness to plead as soon as practicable (but within 3 months) after the end of the period.

(5) On a review, the Tribunal must determine on the balance of probabilities, and in accordance with subsections 37A(3) and (4), whether the person is unfit to plead.

(6) The Tribunal must tell the relevant court of each determination the Tribunal makes about a person and may make recommendations to the court about how the person should be dealt with.

### **Review of certain other people found unfit to plead**

**37C. (1)** This section applies if —

- (a) the Tribunal makes a determination under section 37A or section 37B that a person is unfit to plead to a charge; and
- (b) the charge is for an offence punishable by imprisonment for 5 years or longer; and
- (c) an order is made in relation to the charge under any of the following provisions of the *Criminal Law Act 1960*:
  - (i) subsection 425J(2) (Non-acquittal at special hearing — non-serious offence);
  - (ii) subsection 425K(2) (Non-acquittal at special hearing — serious offence).

(2) The Tribunal may (on application or on its own initiative) review the person's fitness to plead at any time.

(3) However, the Tribunal must review the person's fitness to plead —

- (a) as soon as practicable (but within 3 months) after the end of 12 months after the order is made; and
- (b) at least once every 12 months after each review.

(4) Subsection (3) does not apply if —

- (a) the person has already been found fit to plead; or
- (b) the Crown Counsel has told the Tribunal, in writing, of the Counsel's intention not to take further proceedings against the person in relation to the offence.

(5) On a review, the Tribunal must determine on the balance of probabilities, and in accordance with subsections 37A(3) and (4), whether the person is unfit to plead.

(6) To remove any doubt, this section applies even if the person is no longer in custody or under a mental health order.

Note: A person the subject of a proceeding may be summoned to appear at the proceeding (section 37M).

### Recommendations about mentally dysfunctional or mentally ill persons

**37D. (1)** In this section —

“order for recommendations” means an order of the Supreme Court under the *Criminal Law Act 1960*, Division 11A requiring a person to submit to the jurisdiction of the Tribunal to enable the Tribunal to make recommendations to the court as to how the person should be dealt with.

**(2)** Following such inquiry as the Tribunal thinks appropriate in respect of a person who is subject to an order for recommendations under the *Criminal Law Act 1960*, Division 11A, the Tribunal shall make recommendations to the Supreme Court as to how the person should be dealt with.

### Service of determinations and recommendations

**37E.** The Registrar shall serve a copy of a determination or recommendation made under section 37A, 37B, 37C, 37D or 37F on —

- (a) the person in respect of whom the determination or recommendation is made; and
- (b) the representative of that person (if any); and
- (c) the community Mental Health Advocate; and
- (d) the Crown Counsel; and
- (e) the Registrar or Clerk of the relevant court.

### Periodic review of orders for detention

**37F. (1)** In this section —

“order for detention” means—

- (a) an order of a court under the *Criminal Law Act 1960*, Part 11A requiring a person to be detained in custody until the Tribunal orders otherwise; or
- (b) an order of the Tribunal requiring a person to be detained in custody under section 37H.

**(2)** Where a person has been in custody under an order for detention —

- (a) for a period of 6 months; or
- (b) for a further period of 6 months following the last review of the order under this section;

the Tribunal shall, as soon as practicable, review the order for detention and may order the release of the person.

**(3)** In considering whether or not to order the release of a person, the Tribunal shall have regard to the following —

- (a) the nature and extent of the person’s mental dysfunction or mental illness, including the effect it is likely to have on the person’s behaviour in the future;
- (b) whether or not, if released —
  - (i) the person’s health or safety would be, or would be likely to be, substantially impaired; or
  - (ii) the person would be likely to do serious harm to others;

- (c) the best estimate of the sentence of imprisonment nominated by the relevant court under the *Criminal Law Act 1960*, Part 11A as the sentence it would have imposed had the person been found guilty of the relevant offence.

(4) An order for the release of a person may be made subject to such conditions (if any) as the Tribunal thinks appropriate, including a requirement to comply with specified mental health orders.

(5) If, on a review, the Tribunal does not order the release of a person, the Tribunal may —

- (a) make mental health orders (including additional orders) in respect of the person; or
- (b) vary or revoke any of the mental health orders in force in respect of the person.

(6) If, on a review, the Tribunal determines to order the release of a person under this section the Tribunal must before making the order notify —

- (a) the person in respect of whom the proposed order may be made;
- (b) the representative of that person (if any);
- (c) the Advocate;
- (d) the Registrar of the Supreme Court; and
- (e) the Crown Counsel

of its intention so to do.

(7) An appeal against a determination to release a person under this section may be brought within 28 days after the day on which notice was delivered to the Registrar under subsection (6) by —

- (a) a person given notice under subsection (6); or
- (b) any other person with the leave of the Court.

(8) The Supreme Court shall hear and determine the appeal and may make such orders as are just, including —

- (a) confirming the proposed decision;
- (b) not approving the proposed decision and directing the Tribunal to reconsider the matter having regard to any directions the Court may impose; or
- (c) substituting its own decision.

(9) If an appeal is brought under this section against a determination of the Tribunal to make an order the Supreme Court may order the Tribunal to stay any further proceedings until the appeal is decided and make such other orders as it considers just.

### **Review of conditions of release**

**37G.** The Tribunal may, on application or on its own motion, review the conditions in force in respect of a person released from detention under section 37F(4) and may —

- (a) vary or revoke any of those conditions, including any requirement to comply with specified mental health orders; or
- (b) impose such other conditions as the Tribunal thinks appropriate, including a requirement to comply with specified mental health orders.

**Breach of conditions of release**

**37H.** If a person released from detention breaches a condition in force in respect of the person under section 37F(4), the Tribunal may order the person to be detained in custody until the Tribunal orders otherwise.

**Limit on detention**

**37J. (1)** Nothing in section 37F or 37H permits the Tribunal to require a person to remain in custody for a period that is, or for periods that in the aggregate are, greater than the limiting period.

**(2)** In subsection (1) —

“limiting period”, in relation to a person, means a period that is equivalent to the period —

- (a)** commencing on the day on which an order of the relevant court under the *Criminal Law Act 1960*, Part 11A is made requiring the person to be detained in custody until the Tribunal orders otherwise; and
- (b)** ending on the day on which, if the person had been sentenced to a term of imprisonment for a period equivalent to the term nominated under that Act, that sentence would have expired.

**PART 4B — REFERRALS BY COURTS UNDER CRIMINAL LAW ACT 1960 —  
PROCEDURAL MATTERS****Application of Part**

**37K.** This Part applies to a hearing in respect of matters referred to the Tribunal under Part 4A.

**Summons to appear in person**

**37L. (1)** Subject to subsection (2), the Registrar shall summon the person who is the subject of a proceeding to appear in person at the proceeding if satisfied that it is necessary for the purposes of the proceeding.

**(2)** The Registrar shall not summon a person under subsection (1) if satisfied that the appearance of the person before the Tribunal is likely to increase substantially —

- (a)** any risk to the person’s health or safety; or
- (b)** the risk of serious harm to others.

**(3)** If the Registrar does not summon a person for a reason specified in subsection (2), the Registrar shall make a notation to that effect on any order lodged under section 37A.

**(4)** Where the Registrar has decided not to summon a person, the Tribunal may, on its own motion, summon the person to appear in person before it if the Tribunal is satisfied that it is necessary for the purposes of the proceeding.

**(5)** A summons issued under this section shall —

- (a)** specify the time and place at which the person being summoned is to appear before the Tribunal; and

- (b) contain a statement to the effect that the person being summoned is entitled to be represented before the Tribunal by an agent or a legal practitioner and that the person may wish to obtain legal advice in relation to the summons; and
- (c) be accompanied by a notice containing information about the functions and powers of the Tribunal and of the Mental Health Advocate; and
- (d) be accompanied by a copy of any relevant order under the *Criminal Law Act 1960*, Part 11A.

#### **Person summoned in custody**

**37M.** If a person summoned to appear before the Tribunal is in the custody of another person, the Tribunal may order that other person to ensure that the person summoned does so appear and attends before the Tribunal in person.

### **PART 5 — MENTAL HEALTH ADVOCATE**

#### **Mental Health Advocate**

- 38.** (1) There shall be a Mental Health Advocate appointed by the Minister.
- (2) The Mental Health Advocate holds office for the period, not exceeding 2 years, specified in the instrument of appointment but is eligible for reappointment.
- (3) The Advocate may resign in writing signed by the Advocate and given to the Minister.

#### **Termination of appointment**

**39.** The Minister may terminate the appointment of the Advocate for misbehaviour or physical or mental incapacity.

#### **Acting appointment**

- 40.** The Minister may appoint a person to act as the Advocate —
- (a) during a vacancy in the office of Advocate; or
  - (b) during any period or during all periods when the Advocate is absent from duty or from Norfolk Island or is, for any reason, unable to perform the duties of that office.

#### **Functions**

- 41.** (1) The Advocate has the following functions:
- (a) to represent persons before the Tribunal;
  - (b) to provide assistance and advice to persons detained under section 25;
  - (c) such other functions as may be conferred on the Advocate by or under this or another Act.
- (2) In performing his or her functions, the Advocate may consult such persons, including the relatives of a mentally dysfunctional person, as he or she considers appropriate.

#### **Assistance for Advocate**

**42.** The Advocate may engage a lawyer, doctor or any other person with appropriate expertise to assist in relation to the performance of his or her functions.



## **PART 5A — INTERSTATE APPLICATION OF MENTAL HEALTH LAWS**

### **Authority to enter into agreements**

**42A. (1)** The Minister may enter into an agreement with a Minister of another State or Territory for or with respect to the application of mental health laws of Norfolk Island or the other State or Territory, the transfer, detention and apprehension of persons in Norfolk Island and the other State or Territory under mental health laws and administrative matters and other matters ancillary to, or consequential on, any of those matters or other matters contained in this Part.

**(2)** Nothing in this section limits the power of the Minister to enter into any agreement relating to mental health laws.

### **Norfolk Island officers may exercise powers etc, under corresponding laws**

**42B. (1)** A person authorised under the Act by the Minister for this section or a health practitioner, may exercise a power or perform a function conferred on him or her under a corresponding law.

**(2)** Subsection (1) has effect to the provisions of an interstate agreement about the exercise of a power or performance of a function by the person or health practitioner.

### **Interstate officers may exercise powers etc, in Norfolk Island**

**42C.** A person authorised to exercise a power or perform a function for treating a patient under an interstate order may exercise the power or perform the function in this State.

### **Recognition of interstate laws and orders**

**42D. (1)** The Regulations may declare that a specified law of another State or Territory relating to mental health is a corresponding law for this Part.

**(2)** The Regulations may declare that a specified class of persons, being persons who under a corresponding law are required to be detained at a hospital or other facility or in the custody of a person, are interstate custodial patients for this Part.

**(3)** The Regulations may declare that a class of interstate custodial patients corresponds to 1 of the following —

- (a)** persons being detained under section 22, with the detention having commenced at a specified time;
- (b)** persons subject to a specified custody order that was made at a specified time.

**(4)** The Regulations may provide for a specified class of orders made under a corresponding law, being orders which require the treatment of a person but not the holding of the person in custody.

### **Transfer of custodial patients from Norfolk Island**

**42E. (1)** A person who —

- (a)** is being detained at the Hospital or at an approved place under Part 3; or
- (b)** is subject to a custodial order;

may be transferred to an approved mental health facility in another State or Territory, if the transfer is permitted by or under a provision of a corresponding law of the other State or Territory and is in accordance with the Regulations.

(2) A person may be taken to an approved mental health facility in another State or Territory under this section by a person who is authorised to do so by the Regulations or under a provision of a corresponding law of the other State or Territory.

(3) The Regulations may provide for or with respect to —

- (a) procedures for authorising the transfer of a person under this section and for notifying any such transfer or proposed transfer; and
- (b) criteria for authorising the transfer of a person under this section; and
- (c) the handing over of custody of such a person by persons in Norfolk Island; and
- (d) the persons (including interstate persons) who may take a person to an approved mental health facility in another State or Territory under this section; and
- (e) the approved mental health facilities to which a patient may be taken under this section.

#### **Application of Act to persons transferred from Norfolk Island**

**42F. (1)** If so provided by Regulations, this Act ceases to apply to a person who is accepted into the custody of a responsible person at a health facility in another State or Territory under section 42E.

(2) Where an agreement under section 42A allows it, the Regulations may provide for provisions of this Act to continue to apply in specified circumstances to a person after the person is accepted into the custody referred to in subsection (1).

#### **Transfer of custodial patients to Norfolk Island**

**42G. (1)** A person who —

- (a) is being detained at an approved mental health facility in another State or Territory; or
- (b) is subject to an interstate custodial order;

may be transferred to a Norfolk Island Hospital or approved facility, if the transfer is permitted by or under a provision of a corresponding law of the other State or Territory and is in accordance with the Regulations.

(2) A person may be taken to the Norfolk Island Hospital or approved facility under this section by a person who is authorised to do so by the Regulations or under a provision of a corresponding law of the other State or Territory.

(3) The Regulations may provide for or with respect to —

- (a) procedures for authorising the transfer of a person under this section and for notifying any such transfer or proposed transfer; and
- (b) criteria for authorising the transfer of a person under this section; and
- (c) the handing over of custody of such a person by persons in Norfolk Island; and
- (d) the persons (including interstate persons) who may take a person to an approved mental health facility in another State or Territory under this section; and
- (e) the approved mental health facilities to which a patient may be taken under this section.

**Application of Act to persons transferred to Norfolk Island**

**42H.** Upon being accepted into care by a Norfolk Island health practitioner, the person will be dealt with under section 25.

**Approved mental health facilities**

**42I.** The Minister may, in writing, approve a mental health facility in a State or Territory as a facility at which persons may be detained under this Act or involuntarily detained and cared for.

**Recognition of apprehension orders**

**42J.** A warrant, order or other document issued under a corresponding law, being a document which authorises the apprehension of a person, is recognised in Norfolk Island if the conditions for recognition set out in the Regulations are met.

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

**42K. (1)** Where a person —

- (a) is the subject of a warrant, order or other document recognised in Norfolk Island under section 42J; or
- (b) is otherwise liable to be apprehended, under a provision of a corresponding law under which the person may be apprehended and taken to an approved place;

the person may be apprehended at any time —

- (c) by a police officer; or
- (d) by a person who is authorised to do so by the Regulations or under a provision of a corresponding law of the other State.

**(2)** A person who has been apprehended under this section may be —

- (a) conveyed to and detained in the Hospital or an approved facility in Norfolk Island; or
- (b) where it is permitted by a corresponding law of the other State concerned — conveyed to that State and there dealt with in accordance with the corresponding law.

**(3)** This Act applies to a person conveyed to and detained in an approved health facility under paragraph (2)(a) as if the person were first detained at the facility in accordance with section 22 at the time of admission to the facility.

**Regulations relating to apprehension of persons**

**42L.** The Regulations may provide for or with respect to —

- (a) the kinds of warrants, orders or other documents that may be recognised in Norfolk Island for the purposes of this Part; and
- (b) the conditions (if any) to be met before a warrant, order or other document can be recognised in Norfolk Island; and
- (c) the circumstances when a person is taken to be liable to be apprehended under a corresponding law; and
- (d) the persons (including interstate persons) who may apprehend a person under this section; and
- (e) the health facilities and places to which a person can be taken under this Part (whether in Norfolk Island or another State); and

- (f) the actions (including transfer to the other State) that may be taken in respect of a person detained under this Part.

## PART 6 — MISCELLANEOUS

### Appeals

**43. (1)** An appeal to the Supreme Court from a decision of the Tribunal may be brought by —

- (a) a person in respect of whom the decision was made; or
- (b) a person who appeared, or was entitled to appear under section 12, before the Tribunal at the meeting in which the decision was made; or
- (c) the Mental Health Advocate; or
- (d) any other person with the leave of the Court.

**(2)** The Supreme Court shall hear and determine the appeal and may make such orders as are just, including an order —

- (a) confirming the decision; or
- (b) setting the decision aside and remitting the matter to the Tribunal with directions; or
- (c) substituting its own decision.

### Protection of members of Tribunal, Mental Health Advocate and others

**44. (1)** No action, suit or proceeding lies against a person who is or has been a member of the Tribunal or the Mental Health Advocate in relation to an act done or omitted to be done in good faith in the performance or purported performance of a function under this Act.

**(2)** No action suit or proceeding lies against a person who is performing or has performed a function under this Act in relation to an act done or committed to be done in good faith in the performance or purported performance of a function under this Act.

### Secrecy

**45. (1)** A person who is, or has been, the Mental Health Advocate or who has attended a meeting of the Tribunal shall not, either directly or indirectly, except for the purpose of this Act —

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the person in the performance of a function under this Act or by attending a meeting of the Tribunal; or
- (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: 25 penalty units or imprisonment for 12 months, or both.

**(2)** Subsection (1) does not prevent a person from divulging or communicating information to a person about another person with the consent of that other person.

## Regulations

46. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing all matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may make provision for penalties by way of a fine not exceeding 5 penalty units for offences against the Regulations.

## Consequential amendment

47. The Schedule to the *Lunacy Act 1932* is amended by omitting Items 1 to 9 and substituting:

“Sections 4 to 24      Omit”  
(inclusive)

## Repeal

48. (1) The *Lunacy Agreement Act 1939* is repealed.

(2) The Regulations may contain provisions of a savings or transitional nature consequent on the enactment of subsection (1).

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### NOTES

The *Mental Health Act 1996* as shown in this consolidation comprises Act No. 28 of 1996 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Mental Health Act 1996</i>	28, 1996	8.11.96	
<i>Mental Health (Amendment) Act 2004</i>	13, 2004	12.8.04	
	<i>[Previously consolidated as at 12 August 2004]</i>		
<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout —</i> <i>Commonwealth Minister for Minister;</i> <i>and to substitute Minister for executive</i> <i>member]</i>	14, 2012	28.12.12	

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**Table of Amendments**

ad = added or am = amended rep = repealed rs = repealed and  
 inserted substituted

Provision affected	How affected	
4	am	13, 2004
6(2)	am	13, 2004
11(8)	ad	13, 2004
12(1)(e)	ad	13, 2004
17A	ad	13, 2004
30(2), (3), (4)	ad	13, 2004
30A	ad	13, 2004
37A	ad	13, 2004
37B	ad	13, 2004
37C	ad	13, 2004
37D	ad	13, 2004
37E	ad	13, 2004
37F	ad	13, 2004
37G	ad	13, 2004
37H	ad	13, 2004
37J	ad	13, 2004
37K	ad	13, 2004
37L	ad	13, 2004
37M	ad	13, 2004
42A	ad	13, 2004
42B	ad	13, 2004
42C	ad	13, 2004
42D	ad	13, 2004
42E	ad	13, 2004
42F	ad	13, 2004
42G	ad	13, 2004
42H	ad	13, 2004
42I	ad	13, 2004
42J	ad	13, 2004
42K	ad	13, 2004
42L	ad	13, 2004

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