
MENTAL HEALTH AMENDMENT ACT 1989

No. 8 of 1989

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MENTAL HEALTH AMENDMENT ACT 1989

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No. 8 of 1989
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AN ACT to amend the Mental Health Act 1963.

[Royal Assent 18 April 1989]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Mental Health Amendment Act 1989*. Short title.

2—This Act shall commence on the day fixed by proclamation under section 2 (2) of the *Criminal Code Amendment Act (No. 2) 1989*. Commencement.

3—In this Act, the *Mental Health Act 1963** is referred to as the *Principal Act*. Principal Act.

* No. 63 of 1963. For this Act as amended to 1st September 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 84 of 1981, No. 99 of 1982, Nos. 16 and 29 of 1984, and by Nos. 5 and 51 of 1985.

Amendment of
section 6A of
Principal Act
(Special
institutions).

4—Section 6A of the Principal Act is amended by omitting subsections (5A), (5B), (5C), (5D), and (5E) and substituting the following subsections:—

(5A) Subject to subsection (5B), the Director of Corrective Services may, in the interests of the rehabilitation and medical treatment of a patient who is detained in a special institution which forms part of a prison, transfer that patient within the prison generally.

(5B) A transfer under subsection (5A)—

(a) shall be made on the recommendation of the responsible medical officer; and

(b) shall be made with the consent of the patient.

(5C) The Director of Corrective Services may, where the health, welfare, or security of a patient who is detained in a special institution which forms part of a prison or another person is at risk, transfer that patient within the prison generally.

(5D) A transfer under subsection (5C) shall be reported as soon as practicable by the Director of Corrective Services to the Attorney-General and the responsible medical officer.

(5E) A transfer under subsection (5C) ceases to be valid at the expiration of 3 days from the date of the transfer unless—

(a) the Attorney-General has, within that period, consented to the transfer; and

(b) the responsible medical officer has, within that period, ratified the transfer.

(5F) Where a transfer under subsection (5C) ceases to be valid, the patient shall be transferred to the special institution in which the patient was detained immediately before the transfer of the patient under subsection (5C).

(5G) A transfer under subsection (5C) ceases to be valid at the expiration of 7 days from the date of consent of the Attorney-General or the date of ratification of the responsible medical officer, whichever is the later.

(5H) The Attorney-General may—

- (a) on the recommendation of the Director of Corrective Services (made with the consent of the responsible medical officer), at the expiration of the period referred to in subsection (5G), extend the transfer for further periods, each period not exceeding 7 days; and
- (b) on the recommendation of the responsible medical officer, at any time during the period of a transfer under subsection (5C), direct that the transferred patient be detained in another institution for the period of that transfer or extension of that period.

5—Section 48 of the Principal Act is amended by omitting from subsection (1A) “in the institution specified in the order” and substituting “in an institution”.

Amendment of section 48 of Principal Act (Powers of Supreme Court to make hospital orders and guardianship orders).

6—Section 50 of the Principal Act is amended by omitting subsection (3).

Amendment of section 50 of Principal Act (Hospital orders and guardianship orders in respect of neglected children).

7—Section 51 of the Principal Act is amended by omitting subsections (2A) and (3).

Amendment of section 51 of Principal Act (General provisions as to making of hospital orders and guardianship orders).

8—Section 54 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 54 of Principal Act.

54—(1) Where a court makes a hospital order in respect of a person, the court shall notify the Attorney-General who shall specify the institution within which that person is to be placed.

Provisions applicable where hospital order made by a court.

(2) A hospital order is sufficient authority for a police officer, an authorized officer, or any other person directed to do so by the court to convey the person to whom the order relates at any time during the period of 2 months beginning on the day on which the order was made to an institution specified by the Attorney-General under subsection (1), or, if after the expiration of that period that person is in custody or liable to be taken into custody in pursuance of a sentence of imprisonment, at such later time as the Attorney-General may direct.

(3) Where a court makes a hospital order, it may give such directions as it thinks fit for the conveyance of the person to whom the order relates to a gaol or a place of safety and his detention at such a gaol or place pending his admission to an institution within the period mentioned in subsection (2).

(4) Nothing in subsection (1) empowers the Attorney-General to specify a special institution as the institution in which a person in respect of whom a hospital order has been made under section 50 is to be placed.

(5) The Attorney-General shall not specify a special institution under subsection (1) unless he has considered the evidence of both of the medical practitioners whose evidence was taken into account by the court which made the hospital order and the Attorney-General is satisfied that it is desirable in the interests of the health and safety of the person in respect of whom the hospital order was made, or for the protection of other persons, that he be detained in a special institution.

(6) If it appears to the Attorney-General that, by reason of circumstances that have arisen since he specified the institution within which a person in respect of whom a hospital order was made is to be placed, it is not practicable for the person to be received into that institution, he may give directions for the admission of that person to such other institution as appears to him to be appropriate in the circumstances.

(7) Where any directions are given in respect of a person under subsection (6), the Attorney-General shall cause the person having the custody of the person in respect of whom the hospital order was made to be informed of his directions, and the hospital order has effect as if the institution specified in the directions were substituted for the institution first specified by the Attorney-General under subsection (1).

Amendment of section 55 of Principal Act (Effect of hospital orders and guardianship orders on sentences of imprisonment).

9—Section 55 (4) of the Principal Act is amended by omitting “subsection (1) of section 54” and substituting “section 54 (3)”.

Amendment of section 61 of Principal Act (Transfer directions in respect of persons detained during criminal proceedings).

10—Section 61 (1) of the Principal Act is amended by omitting “or sentence of death”.

11—Section 65 of the Principal Act is amended as follows:—
 (a) by omitting subsection (1) and substituting the following subsection:—

Amendment of section 65 of Principal Act (General effect of hospital orders and guardianship orders).

(1) A hospital order made in respect of a person authorizing him to be detained in an institution is sufficient authority for the controlling authority of an institution specified by the Attorney-General under section 54 (1) to admit him to that institution at any time within a period of 2 months beginning on the day on which the order was made, or within a period of 14 days after a direction has been given by the Attorney-General in his case under section 54 (2), and detain him in accordance with this Act.

(b) by inserting in subsection (5) “than” after “otherwise”.

12—Section 70 of the Principal Act is amended by omitting from subsection (3) all the words after “him”.

Amendment of section 70 of Principal Act (Discharge of patients whose discharge is subject to restriction).

13—Section 71 (2) of the Principal Act is amended by omitting “indeterminate sentence within the meaning of section 56” and substituting “order under section 392 of the *Criminal Code* that a person be detained during the Governor’s pleasure”.

Amendment of section 71 of Principal Act (Addition to term of sentence of period during which patient is at large).

14—Section 104 (5) of the Principal Act is amended by omitting “section 54 the period of 28 days therein mentioned” and substituting “subsection (2) of section 54 the period of 2 months mentioned in that subsection”.

Amendment of section 104 of Principal Act (Retaking of patients escaping from custody).

