

TASMANIA

MENTAL HEALTH (MISCELLANEOUS AMENDMENTS) BILL 2006

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MENTAL HEALTH (MISCELLANEOUS AMENDMENTS) BILL 2006

*(Brought in by the Minister for Health and Human Services,
the Honourable Larissa Tahireh Giddings)*

A BILL FOR

**An Act to amend the *Mental Health Act 1996* and the
*Community Protection (Offender Reporting) Act 2005***

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Mental Health
(Miscellaneous Amendments) Act 2006*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

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Part 2 – Mental Health Act 1996 Amended

PART 2 – MENTAL HEALTH ACT 1996 AMENDED

3. Principal Act

In this Part, the *Mental Health Act 1996** is referred to as the Principal Act.

4. Section 52 amended (Reviews of certain orders, authorisations and admissions)

Section 52(4)(d) of the Principal Act is amended by omitting “a person” and substituting “an involuntary patient”.

5. Section 72G amended (Medical treatment generally)

Section 72G(6)(c) of the Principal Act is amended by omitting “Secretary” and substituting “Secretary (Youth Justice)”.

6. Section 73V amended (Functions and powers of Forensic Tribunal)

Section 73V of the Principal Act is amended as follows:

- (a) by omitting paragraph (j) from subsection (1) and substituting the following paragraphs:

*No. 31 of 1996

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- (j) to review, on the application of responsible applicants, the transfer under Part 12 of –
 - (i) forensic patients who are not prisoners; and
 - (ii) persons who are subject to supervision orders;
 - (k) other functions imposed by this or any other Act.
- (b) by inserting the following subsection after subsection (2):
- (3) In this section –
- “responsible applicant”,** in relation to a person who is subject to a supervision order or a forensic patient, means –
- (a) the person or forensic patient; or
 - (b) an applicant who is responsible for the person or forensic patient; or
 - (c) an applicant who, in the opinion of the Forensic Tribunal, has a proper interest in

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the welfare of the
person or forensic
patient.

7. Section 82 amended (Transfer agreements)

Section 82 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) The Minister may enter into an agreement with the Minister responsible for the administration of a corresponding law providing for the transfer of any one or more of the following:
 - (a) involuntary patients;
 - (b) forensic patients who are not prisoners;
 - (c) persons who are subject to supervision orders.

8. Section 83 amended (Effect of transfer agreements)

Section 83(1) of the Principal Act is amended as follows:

- (a) by omitting “is in force under this Division–” and substituting “in force under this Division so provides –”;
- (b) by inserting in paragraph (c) “relevant” after “under the”;

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- (c) by omitting from paragraph (c) “Act.” and substituting “Act; and”;
 - (d) by inserting the following paragraphs after paragraph (c):
 - (d) an order made under the relevant corresponding law and corresponding to a supervision order has effect, subject to any adaptations and modifications for which the agreement provides, as if it were a supervision order with conditions corresponding to those of the order made under the corresponding law; and
 - (e) the supervision of a person subject to a supervision order may be transferred from the Chief Forensic Psychiatrist to a medical practitioner in the State or Territory to which the agreement relates.

9. Part 12, Division 2: Heading amended

Division 2 of Part 12 of the Principal Act is amended by omitting “*patients*” from the heading to that Division and substituting “*patients, &c.*”.

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10. Section 83A amended (Interpretation of Division)

Section 83A of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of “affected jurisdiction”:

“abscond” includes being absent without leave of absence;

- (b) by inserting the following definition after the definition of “corresponding law”:

“forensic patient” does not include a forensic patient who is a prisoner;

11. Section 83B amended (Agreements for the return, &c., of absconding involuntary patients, &c.)

Section 83B of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) The Minister may enter into an agreement with the Minister responsible for the administration of a corresponding law providing for either or both of the following:

- (a) the apprehension, detention and return of any one or more of the following:

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- (i) involuntary patients or forensic patients who abscond from the approved hospital or secure mental health unit at which they are being lawfully detained and are found at large in the affected jurisdiction;
 - (ii) persons who are liable to be detained at a secure mental health unit as forensic patients and are found at large in the affected jurisdiction;
 - (iii) persons who are in breach of supervision orders and are found at large in the affected jurisdiction;
- (b) the apprehension, detention and return of any one or more of the following:
 - (i) persons, other than prisoners, who abscond from the mental health facility at which they are being detained under the corresponding law and are found at large in this State;

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- (ii) persons, other than prisoners, who are liable to be detained at a mental health facility under the corresponding law and are found at large in this State;
- (iii) persons who are in breach of orders made under the corresponding law for the treatment in the community of mental illness (including any orders of that kind that correspond to supervision orders) and are found at large in this State.

12. Sections 83E and 83F substituted

Sections 83E and 83F of the Principal Act are repealed and the following sections are substituted:

83E. Apprehension, &c., of involuntary patients, &c., from interstate

(1) This section applies if a person –

- (a) absconds from the mental health facility at which he or she is being detained under a corresponding law or contravenes a condition subject to which he or

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she has been granted leave of absence from that facility and, not being a prisoner of the affected jurisdiction, is found at large in this State; or

- (b) is liable to be detained at a mental health facility under a corresponding law and, not being a prisoner of the affected jurisdiction, is found at large in this State; or
- (c) is in breach of an order made under a corresponding law for the treatment in the community of mental illness (including any order of that kind that corresponds to a supervision order) and is found at large in this State.

(2) The person may be apprehended by –

- (a) an authorised officer; or
 - (b) anyone who, under the corresponding law, would be authorised to apprehend the person had the person been found at large in the affected jurisdiction.
- (3) For the purposes of subsection (2), a warrant or other instrument that, under the corresponding law, would authorise the apprehension of the person if he or

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she were found at large in the affected jurisdiction also authorises the person's apprehension in this State.

- (4) On being apprehended, the person –
 - (a) is to be taken to a mental health facility of the affected jurisdiction; but
 - (b) may be admitted to and detained at an approved hospital or secure mental health unit pending his or her return to that jurisdiction.
- (5) For the purpose of apprehending the person –
 - (a) an authorised officer may exercise any powers that he or she may exercise under section 15 in relation to persons being taken into protective custody; and
 - (b) anyone acting under subsection (2)(b) has the same powers as an authorised officer.

83F. Apprehension, &c., of involuntary patients, &c., found interstate

- (1) This section applies if –
 - (a) an involuntary patient or forensic patient absconds from the approved hospital or secure

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mental health unit at which he or she is being detained and is found at large in another State; or

- (b) an involuntary patient or forensic patient contravenes a condition subject to which he or she has been granted leave of absence from the approved hospital or secure mental health unit at which he or she is being detained and is found at large in another State; or
 - (c) a person who is liable to be detained at a secure mental health unit as a forensic patient (in this section referred to as “the unadmitted forensic patient”) is found at large in another State.
- (2) The involuntary patient, forensic patient or unadmitted forensic patient may be apprehended and, as the case may be, taken to the approved hospital or secure mental health unit by –
- (a) an authorised officer; or
 - (b) a person who, under the law of the affected jurisdiction, is authorised to take the involuntary patient, forensic patient or unadmitted forensic patient to a mental health facility in that jurisdiction.

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83G. Apprehension, &c., of persons in breach of supervision orders found interstate

- (1) This section applies if a person in breach of a supervision order is found at large in another State.
- (2) The person may be apprehended and returned to this State and placed back under the supervision of the Chief Forensic Psychiatrist by –
 - (a) an authorised officer; or
 - (b) a person who, under the law of the affected jurisdiction, is authorised to apprehend persons in breach of orders of that jurisdiction that correspond to supervision orders.

**PART 3 – COMMUNITY PROTECTION (OFFENDER
REPORTING) ACT 2005 AMENDED**

13. Principal Act

In this Part, the *Community Protection (Offender Reporting) Act 2005** is referred to as the Principal Act.

14. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from the definition of “government custody” and substituting the following paragraph:
 - (a) custody as a prisoner or detainee or as a mentally impaired defendant where the order made under the *Criminal Justice (Mental Impairment) Act 1999* requires the person to be detained in a secure mental health unit (or, in the case of an order made under Part 4 of that Act before 20 February 2006, detained in a special facility within the meaning of that Act as originally enacted) or to be kept in government custody; or

*No. 61 of 2005

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(b) by omitting paragraph (c) from the definition of “sentence” and substituting the following paragraph:

(c) an order made under the *Criminal Justice (Mental Impairment) Act 1999*; and