

Introduced by Dr P A C Macdonald, MP

First print



New South Wales

Mental Health Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Mental Health Act 1990*:

- to broaden the criteria for determining whether a person is a mentally ill person or a mentally disordered person for the purposes of the Act. The effect of this is to extend the circumstances when a person can be involuntarily detained in a hospital under the Act. The new criteria for determining whether a person is a mentally ill person will include whether a person needs care, protection or treatment for his or her protection from physical harm, financial harm or damage to reputation or because the person is unable to care for himself or herself or is not receiving appropriate care necessary for the person's health or welfare. It will also include whether the care, protection or treatment is necessary to protect others from physical harm. Currently, it is only the potential for serious physical harm to the person or others which can be taken into account to determine whether a person is a mentally ill person and the circumstances when financial harm to the person or damage to the person's reputation can be taken into account are
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limited to particular mental conditions. The new criteria for determining whether a person is a mentally disordered person removes the requirement that feared harm to the person or others be serious physical harm.

- to extend the maximum period for community treatment orders made under the Act from 3 months to 6 months.
- to make consequential amendments and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on assent.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Mental Health Act 1990*.

Schedule 1 Amendments

Schedule 1 [1] amends section 9 of the *Mental Health Act 1990* to broaden the criteria for determining whether a person is a mentally ill person for the purposes of that Act as discussed in the overview of the Bill.

Schedule 1 [2] amends section 10 of the *Mental Health Act 1990* to broaden the criteria for determining whether a person is a mentally disordered person for the purposes of that Act as discussed in the overview of the Bill.

Schedule 1 [3] extends the maximum period for community treatment orders as discussed in the overview of the Bill.

Schedule 1 [4], [5] and [6] make consequential amendments as a result of changes to sections 9 and 10 of the *Mental Health Act 1990*.

Schedule 1 [7] inserts transitional provisions consequent on the proposed amendments. The new criteria for mentally ill persons will apply to all people detained in hospitals before the amendments commence but will not apply to people detained on the grounds of being mentally disordered persons before that commencement. The amendment relating to community treatment orders will not apply to extend the duration of existing orders.

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New South Wales

Mental Health Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Mental Health Act 1990* with respect to criteria for mentally ill persons and mentally disordered persons; to extend the maximum period for community treatment orders; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mental Health Amendment Act 1995*.

2 Commencement

This Act commences on the date of assent.

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3 Amendment of Mental Health Act 1990 No 9

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

Schedule 1 Amendments

(Section 3)

[1] Section 9 Mentally ill persons

Omit section 9 (1). Insert instead:

- (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: 5
- (a) for the person's own protection from physical harm, or 10
 - (b) for the protection of others from physical harm, or
 - (c) for the person's own protection from financial harm, or
 - (d) for the person's own protection from damage to the person's reputation, or 15
 - (e) because the person is unable to care for himself or herself, or
 - (f) because the person is not receiving appropriate care required for the person's health or welfare.

[2] Section 10 Mentally disordered persons 20

Omit "serious" wherever occurring.

[3] Section 135 Duration of community treatment orders

Omit "3 months" wherever occurring from section 135 (1).
Insert instead "6 months".

[4] Schedule 2 Medical certificate as to examination or observation of person

Omit item 1 in Part 1. Insert instead:

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: 5
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- * (a) in the case of any mentally ill person:
 - (i) for the person's own protection from physical harm, or
 - (ii) for the protection of others from physical harm, or 15
 - (iii) for the person's own protection from financial harm, or
 - (iv) for the person's own protection from damage to the person's reputation, or
 - (v) because the person is unable to care for himself or herself, or 20
 - (vi) because the person is not receiving appropriate care required for the person's health or welfare, or
- * (b) in the case of a mentally disordered person: 25
 - (i) for the person's own protection from physical harm, or
 - (ii) for the protection of others from physical harm.

[5] Schedule 2

Omit from item 1 of the Notes the matter relating to section 9 (1).
Insert instead:

- (2) 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: 5
 - (a) for the person's own protection from physical harm, or
 - (b) for the protection of others from physical harm, or 10
 - (c) for the person's own protection from financial harm, or
 - (d) for the person's own protection from damage to the person's reputation, or
 - (e) because the person is unable to care for himself or herself, or 15
 - (f) because the person is not receiving appropriate care required for the person's health or welfare.

[6] Schedule 2

Omit "serious" wherever occurring in the matter relating to section 10 in item 1 of the Notes. 20

[7] Schedule 7 Savings, transitional and other provisions

Insert after Part 6:

Part 7 Provisions consequent on Mental Health Amendment Act 1995 25

41 Mentally ill persons

Section 9, as amended by the *Mental Health Amendment Act 1995*, applies to a person taken to a hospital before the commencement of the amendment and not released before that commencement. 30

Mental Health Amendment Bill 1995

Schedule 1 Amendments

42 Mentally disordered persons

Section 10, as amended by the *Mental Health Amendment Act 1995*, does not apply to a person taken to a hospital before the commencement of the amendments and not released before that commencement.

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43 Community treatment orders

Section 135, as amended by the *Mental Health Amendment Act 1995*, does not apply to community treatment orders in force immediately before the commencement of the amendment.

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