

Mental Health (Amendment) Bill

EXPLANATORY MEMORANDUM

Outline

The Bill makes various amendments to the **Mental Health Act 1986**.

Clause Notes

Clause 1 sets out the purposes of the Bill.

Clause 2 is the commencement provision.

Clause 3 states that the **Mental Health Act 1986** is the Principal Act referred to in the Bill.

Clause 4 (a) repeals the definition of the terms “approved psychiatric hospital”, “psychiatric in-patient service”, “regulations” and “voluntary patient”.

Clause 4 (b) inserts a definition of “approved mental health service” which is premises or a service proclaimed under section 94 of the of the Principal Act.

The clause also inserts a definition of “mental disorder” into the Principal Act which provides that “mental disorder” includes mental illness.

The clause also inserts a definition of “treatment” into the Principal Act. It provides that treatment is the exercise of professional skill to remedy the mental disorder, or to lessen its ill effects or the pain and suffering which it occasions.

Clause 4 also makes a number of consequential amendments to definitions contained in section 3 of the Principal Act.

Clause 4 (b) also inserts a definition of “registered nurse” into the Principal Act.

Clause 4 (d) amends the definition of “involuntary patient” to include patients detained under the new section 12A and 12c.

Clause 4 (e) amends the definition of “patient” in the Principal Act to exclude the current class of voluntary patients.

Clause 4 (f) amends the definition of “primary carer” to exclude people who are employed in the role of a carer.

Clause 4 (h) amends the definition of “senior officer”.

Clause 5 amends the heading to Part 2.

Clause 6 amends section 4 of the Principal Act. *Clause 6 (1)* clarifies that the Principal Act focuses on the care, protection and treatment of involuntary patients and facilitates treatment for other people with a mental disorder.

Clause 6 (2) amends section 4 (2) of the Principal Act to provide that people with a mental disorder receive the least restrictive treatment. The amendments also require that intrusions on the privacy of people with a mental disorder should be kept to a minimum.

Clause 7 amends section 5 of the Principal Act. *Clause 7 (a)* amends section 5 (a) of the Principal Act to provide that mental health services should take into account the age specific, gender specific, religious, cultural, language and other special needs of people with a mental disorder. The Principal Act is amended to encourage such services to promote the mental health of the community, consumer participation and access to complaint mechanisms.

Clause 8 substitutes a new section 6 in the Principal Act. The functions of the Secretary largely reflect the existing functions. However, they also take into account the new arrangements for service delivery by public hospitals.

Clause 9 introduces Principles of Treatment and Care into Part 2 of the Act. These principles will guide the provision of services to all people with a mental disorder. They promote high quality treatment in the community to allow self reliance by consumers.

Clause 10 repeals section 7 of the Principal Act relating to voluntary patients.

Clause 11 amends section 8 of the Principal Act.

Clause 11 (1) replaces section 8 (1) (c) of the Principal Act and makes it clear that a person's mental illness must be the reason they need to be detained for their own health and safety. It also clarifies that deterioration in a person's mental or physical health can be taken into account when considering involuntary treatment.

Clause 11 (2) introduces a definition of "mental illness" into the Principal Act. The definition provides that a mental illness is a medical condition which is characterised by a significant disturbance of thought, mood perception or memory.

Clause 11 (3) amends the Principal Act to ensure that a diagnosis of mental illness cannot be made simply on the grounds of a person's economic or social status, or their membership of a particular cultural or racial group.

Clause 11 (4) clarifies that where a person is to be involuntarily treated, it is that person's ability to consent which is to be considered. The consent of a guardian appointed by the Guardianship and Administration Board is not to be taken into account for the purposes of section 8 (1) (d) of the Principal Act.

Clause 12 amends section 9 of the Principal Act. *Clause 12 (1)* and *(2)* make amendments for consistency with other amendments made in the Bill. *Clause 12 (3)* inserts new sections into section 9 to enable mental health practitioners to authorise transport for a mentally ill person to an approved mental health service where a medical practitioner is not available to make a recommendation. To authorise transport, the mental health practitioner must consider that the criteria in section 8 (1) of the Principal Act are met and that the person should be admitted to an approved mental health service to be examined by a medical practitioner. The class of mental health practitioner who will be able to give this authority will be specified by regulations. The amendments will allow for appropriate transport to be obtained where a medical practitioner is not able to attend.

Clause 13 inserts a new sub-section (1A) into section 10 of the Principal Act which clarifies that police do not have to exercise clinical judgment when exercising their powers under that section.

Clause 14 amends section 12 of the Principal Act. The amendments relate to the admission of a person to an approved mental health service. *Clause 14 (1)* amends the

Principal Act so that if the admitting medical practitioner does not believe that a person meets the criteria in section 8 (1) of the Principal Act, the practitioner should notify the Authorised Psychiatrist as soon as practicable. The Authorised Psychiatrist will then have to examine the person as soon as practicable.

Clause 14 (2) and (3) make consequential amendments.

Clause 14 (4) amends section 12 (5) of the Principal Act to clarify that it is the authorised psychiatrist who has responsibility for consenting to psychiatric treatment of a patient.

Clause 14 (5) inserts a new section 12 (6) into the Principal Act which requires the authorised psychiatrist to notify a patient's guardian that the patient has been admitted and the grounds for admission.

Clause 15 inserts new sections 12A–12D into the Principal Act

The new sections allow for the involuntary treatment of people who may not be mentally ill, but who have a mental disorder which causes them to inflict serious physical harm on themselves.

Section 12A applies to patients who are being involuntarily treated for a mental illness, but who no longer meet the criteria in section 8 (1) of the Principal Act. If such a patient has a mental disorder for which treatment is available and if the patient was discharged he or she might cause serious physical harm to him or herself, the authorised psychiatrist may make an application to the Chief Psychiatrist for the detention of a person to be continued for a period of up to three months. When considering whether to make an application the Authorised Psychiatrist must take into account the nature of the person's behaviour, its duration, frequency and impact upon the person. The Authorised Psychiatrist may also consult with family of the patient, carers, treating staff and other relevant people regarding the patient's behaviour. Upon receipt of an application the Chief Psychiatrist must notify the Secretary.

Section 12B states that the Secretary must convene a committee of three psychiatrists to determine the application. The Committee must examine the patient and consider the criteria in section 12A in deciding whether to confirm the continued detention, or to refuse to consent to the continued detention.

Section 12C provides that an application must be determined by the Committee within 7 days. There is no limit to the number of times detention and treatment under the section can be renewed.

Section 12D provides that the Chief Psychiatrist may initiate the process without an application by an authorised psychiatrist where the Chief Psychiatrist believes that the criteria required for an application are met. The Chief Psychiatrist would then notify the Secretary and a Committee would be convened. The Chief Psychiatrist would still be a member of the Committee in this case.

Clause 16 makes consequential amendments to section 13 of the Principal Act relating to admission to a general hospital or emergency ward.

Clause 17 makes amendments to section 14 of the Principal Act relating to community treatment orders. *Clause 17 (1)* makes consequential amendments. *Clause 17 (2)* means that section 14 of the Principal Act states the criteria for community treatment orders.

Clause 17 (3) amends section 14 (2) of the Principal Act to clarify that a community treatment order must specify the authorised psychiatrist who is to monitor the treatment, and the frequency which the medical practitioner supervising the treatment must report in writing to the monitoring psychiatrist.

Clause 17 (4) makes consequential amendments.

Clauses 17 (5) amends section 14 (4) of the Principal Act to clarify the review and discharge procedures for community treatment orders.

Clause 18 makes consequential amendments to sections 15A and 15B of the Principal Act so that they are consistent with the amended section 8 of the Principal Act.

Clause 19 makes consequential amendments to section 16 of the Principal Act in relation to transfer of mentally ill prisoners so that it is consistent with the amended sections 8 and 12 of the Principal Act.

Clause 20 amends section 18 of the Principal Act to provide that the Authorised Psychiatrist has the responsibility for ensuring that a patient is informed both orally and in writing of his or her rights.

Clause 21 amends section 26 of the Principal Act. Under the amended section 26 (7) a person (or their representative) who is the subject of a review or appeal to the Mental Health Review Board must be given access to the written materials which are to be placed before the Board at least 24 hours before the hearing. Exemptions may be granted by the Board if the disclosure would cause serious harm to the person's health or put the safety of some other person at risk, or was provided in confidence. The section reflects the current practice of the Mental Health Review Board.

Clause 22 inserts a new section 30 into the Principal Act. The new section mirrors the existing section with the additional requirement that where a person is detained under the new section 12A of the Act, a review by the Mental Health Review Board must take place within 14 days of the decision confirming detention.

Clause 23 inserts a new section 32 (4) into the Principal Act requiring the Board to notify the Office of the Public Advocate of any hearing regarding a person detained under new section 12A.

Clause 24 makes consequential amendments to section 36 of the Principal Act so that it is consistent with the amended section 14 of the Act.

Clause 25 amends section 39 of the Principal Act. It removes the requirement that the Chief Psychiatrist be notified of transfers of involuntary patients between approved mental health services. It also amends section 39 (3) of the Principal Act to require that documents relating to the admission and **future** treatment of a patient are forwarded to the receiving service.

Clause 26 makes consequential amendments to sections 40 and 41 of the Principal Act.

Clause 27 makes consequential amendments to section 42 of the Principal Act.

Clause 28 amends section 43 of the Principal Act. Currently, the class of people who have the power to apprehend a patient who is absent without leave is different from the class of people who can apprehend and transport a person who has been recommended

under section 9 of the Principal Act. The amendment ensures that the Act is consistent and allows ambulance officers to transport an involuntary patient absent without leave.

Clause 29 makes consequential amendments to section 47 of the Principal Act.

Clause 30 makes consequential amendments to section 49 of the Principal Act relating to transfer of security patients. The amendments also require that documents relating to the admission and future treatment of a security patient are forwarded to the receiving service when a security patient is transferred.

Clause 31 makes consequential amendments to section 50 of the Principal Act.

Clause 32 amends section 51 of the Principal Act. Currently the Principal Act provides that the Mental Health Review Board and the Chief Psychiatrist may decide an application for leave by a security patient. In practice all applications are made to the Chief Psychiatrist and if a patient is not satisfied with the decision she or he appeals to the Mental Health Review Board. The amendments reflect this practice.

Clause 32 (1) removes the power of the Board to make a decision on leave at first instance. *Clause 32* (4) inserts appeal provisions into section 51 of the Principal Act to permit an appeal to the Mental Health Review Board from the decision of the chief Psychiatrist.

Clause 33 amends section 53 of the Principal Act, to make it consistent with the provisions in the amended section 43 of the Principal Act.

Clause 34 amends the Heading to Part 5 of the Principal Act.

Clause 35 inserts a new Division in Part 5 of the Act with new requirements in relation to obtaining “informed consent”. The definition of informed consent applies to all treatments under Part Five of the Principal Act except to a particular class of non-psychiatric treatment. The definition is largely the same as the existing definition of informed consent in section 55 of the Act.

Clause 36 repeals sections 55 and 72 (1) of the Principal Act, which relate to informed consent to treatment for Psychosurgery and electroconvulsive therapy.

Clause 37 amends sections 57 to 65 of the Principal Act. Under the Principal Act the Psychosurgery Review Board can approve psychosurgery where a person has not given informed consent if the Psychosurgery Review Board believes that it is in the person’s best interest to have the psychosurgery performed. Under the amended sections 57 to 65 this power of the Psychosurgery Review Board will be removed, and psychosurgery will not be able to be performed without the informed consent of the person.

Clauses 37 (1) to (6) make consequential amendments to sections 57 (1), (2) and (3), 58, 64 and 65 in relation to the new definition of informed consent and the new definition of “approved mental health service”.

Clause 37 (7) repeals section 64 (2) to remove the power of the Psychosurgery Review Board to permit psychosurgery where a patient is not able to give informed consent.

Clause 38 amends the definition of “electroconvulsive therapy” in section 72 (2) of the Principle Act.

Currently the Act defines a “course” of electroconvulsive therapy as not more than six treatments over six weeks. A patient may consent to a course, but consent must be sought for each further individual treatment if it is still within the six week period. The amended section will permit a person to consent to a further course of up to six treatments. The amendment removes the six week restriction and ensures that a “course” of electroconvulsive therapy will occur where there is no break of more than 7 days between treatments.

Clause 39 amends section 73 of the Principal Act.

Clause 39 (2) (a) amends section 73 (3) (a) of the Act to provide that, in addition to the existing criteria for electroconvulsive therapy, the authorised psychiatrist must be satisfied that appropriate alternative treatments have been considered, and that without the electroconvulsive therapy the person is likely to suffer serious mental or physical deterioration.

Clause 39 (2) (b) amends section 73 (3) (b) of the Principal Act. This section currently requires that primary carers or guardians be asked to consent to electroconvulsive therapy where a person cannot give informed consent. Many guardians or primary carers do not want to be placed in the position of being seen to authorise this serious treatment for mental disorder. The amended section will require that the primary carer or guardian be notified in advance of the decision to perform electroconvulsive therapy. This will give the primary carer the opportunity to advocate on behalf of the patient if they choose to.

Clause 40 replaces section 74 (4) and provides that premises which were psychiatric in-patient services or approved mental health services before the commencement of the section are “deemed” to have licences for electroconvulsive therapy for 12 months from the commencement of the section.

Clause 41 amends section 76 (1) (d) of the Principal Act and provides that licences for the performance of electroconvulsive therapy are to be for a maximum of 5 years.

Clause 42 replaces section 80 of the Principal Act to require that the holder of a licence to perform electroconvulsive therapy must report to the Secretary on a monthly basis.

Clause 43 amends section 81 of the Principal Act in relation to mechanical restraint.

The clause introduces a definition of mechanical restraint into the Act and inserts detailed requirements regarding the monitoring and review of people who are restrained.

Clause 43 (1) amends section 81 (1) to ensure that the provisions regarding mechanical restraint apply to all people receiving treatment for a mental disorder in an approved mental health service.

Clause 43 (1) (d) amends section 81 (1) (b) to provide that where a nurse authorises restraint, a medical practitioner, rather than the authorised psychiatrist, has to be notified.

Clause 43 (2) inserts a definition of mechanical restraint. The definition provides that “mechanical restraint” includes belts, harnesses, manacles, sheets or straps placed on a person’s body, but does not include the use of furniture which restricts a person’s ability to get off the furniture.

Proposed new section 81 (1B) provides that where a nurse authorises restraint and notifies a medical practitioner, the authorised psychiatrist should be notified as soon as practicable.

Proposed new section 81 (1C) clarifies that restraint can be applied without a person's consent.

Proposed new section 81 (1D) requires that a person who is restrained must be continuously observed by a member of the clinical staff. They must also be clinically reviewed at least every 15 minutes and a examined at intervals of not more than four hours by a medical practitioner. Clothing, bedding, food, drink and toilet arrangements should also be provided.

Proposed new section 81 (1E) provides that the authorised psychiatrist may grant an exemption from the 4 hourly medical examination if appropriate.

Proposed new section 81 (1F) provides that a registered medical practitioner, the senior registered nurse or the Authorised Psychiatrist must end the restraint if the patient no longer meets the criteria for being restrained.

Clause 43 (3) and (4) make consequential amendments to section 81 (2) and (3) of the Principal Act and amend section 81 (3) to require that all incidents of restraint be reported to the Chief Psychiatrist monthly.

Clause 44 makes amendments to section 82 of the Principal Act. It introduces new criteria regarding the use of seclusion in approved mental health services and makes amendments to the requirements regarding the monitoring and review of people who are placed in seclusion.

Clause 44 (1) makes consequential amendments to section 82 (1) of the Principal Act.

Clause 44 (2) makes consequential amendments to section 82 (2) of the Act and amends the criteria for seclusion. The amendments provide that seclusion may only be used where it is necessary to protect a person or others from immediate or imminent risk to health or safety, or to prevent a person from absconding.

The requirements regarding the authorisation of seclusion are amended to mirror the amended requirements in relation to mechanical restraint. *Clause 44* (4) and (5) amend the requirements regarding the monitoring of seclusion.

Clause 44 (7) amends section 82 (5) of the Act regarding the reporting of the use of seclusion to the Chief Psychiatrist.

Clause 45 amends sections 83 to 85 of the Principal Act in relation to the performance of non-psychiatric treatment. The amendments provide for two categories of non-psychiatric treatment. The category of major non-psychiatric treatment will be defined by guidelines issued by the Chief Psychiatrist. For this type of treatment a patient will have to provide the level of informed consent provided for in the amended section 53B of the Act. The lesser category of non-psychiatric treatment will require the level of informed consent which is currently provided for in section 83 (2).

Clause 45 (6) amends section 85 (2) and (3) of the Act to require that an approved mental health service must maintain a register of all major non-psychiatric treatment performed.

Clause 46 makes consequential amendments to section 86 of the Act.

Clause 47 inserts a new section 87A into the Principal Act which establishes a mechanism for the appointment of “senior officers”.

Clause 48 amends Division 6 of Part 5, which concerns Patients’ Trust Accounts. The effect of the amendments is to remove the provisions relating to patients amenities accounts. A portion of the interest from Patients’ Trust accounts will no longer be able to be paid into the patient amenities account at a psychiatric in-patient service or approved mental health service.

Clause 49 provides that money currently held in patients amenities accounts will be paid into the Psychiatric Illness and Intellectual Disabilities Donations Trust Fund.

Clause 50 replaces section 94 of the Principal Act. The new section will allow the Governor in Council to proclaim premises or services as approved mental health services. Premises which were proclaimed as psychiatric hospitals or units under the Principal Act will be deemed to be approved mental health services.

Clause 51 amends section 96 of the Principal Act relating to the appointment of Authorised Psychiatrists for approved mental health services. The provisions will allow approved mental health services which are not run by the state to appoint a qualified psychiatrist as an authorised psychiatrist, and the Secretary of the Department will appoint an authorised psychiatrist for approved mental health services which are run by the State.

Clause 51 (4) replaces section 96 (5) of the Act and places limitations on those powers which an authorised psychiatrist may delegate to a medical practitioner.

Clause 52 introduces a new definition of “community support services” into the Act and makes consequential amendments to ensure that section 100 of the Act is consistent with the amended objects of the Act. The new definition reflects the current practice and terminology.

Clause 53 amends section 105 of the Act to allow the appointment of authorised officers to assist the Chief Psychiatrist.

Clause 54 replaces section 106 of the Act. The Chief Psychiatrist or an authorised officer may visit a psychiatric service if the Chief Psychiatrist believes that a person was not provided with proper medical care or the person’s welfare was endangered.

The amendments clarify that the powers of the Chief Psychiatrist may be exercised without the necessity of the Chief Psychiatrist visiting a service. The powers include the powers of inspection, seeing patients or examining and copying documents.

Clause 55 inserts new sections 106AA and 106AB into the Act.

Proposed new section 106AA provides that the Chief Psychiatrist may direct that a particular practice or treatment be stopped, altered or carried out where the Chief Psychiatrist is satisfied following an investigation that the direction is necessary for an individual’s medical care or welfare.

Proposed new section 106AB provides that the Chief Psychiatrist may direct that a patient or other person be admitted to an approved mental health service as an involuntary patient. This power can only be exercised if the person meets the criteria

in section 8 (1) of the Act and the Chief Psychiatrist has taken into account the availability of facilities and staff and the adverse effects on other patients at the service.

Clause 56 amends Division 5 of Part 6, relating to community visitors.

The definition of a “mental health service” in section 107 of the Principal Act is amended. The amendment provides that a mental health service is a service which provides residential services and 24 hour nursing care for people with a mental disorder. The amendments clarify that the function of community visitors under the Act is to visit and comment on services which provide residential services and 24 hour nursing care. This reflects current practice of the community visitors.

Clause 57 amends the confidentiality provisions in section 120A of the Principal Act.

The clause amends the definition of a “psychiatric service” to ensure that the definition reflects current methods of service delivery.

Clause 57 also amends section 120A (3) (c) of the Act, which provides that disclosure of certain information is exempt from the confidentiality provision. The amendments clarify that general information regarding a person’s condition may be disclosed. This is the accepted practice in all hospitals. The clause also introduces a new section 120A (3) (ca) which provides that information may be disclosed if it is provided by a member of the medical staff or a particular class of staff. This class will be prescribed in regulations. Information under this exemption may only be provided to a guardian, family member or primary carer where the information was directly related to the ongoing care of the person and the person receiving the information will be involved in the ongoing care of the patient.

Clause 57 (5) inserts new exemptions into section 120A (3) of the Principal Act to permit disclosure of information to the Minister or Secretary of the Department. The section also permits a class of information to be exempted by the Minister when the Minister believes disclosure is necessary in the public interest.

Clause 58 makes consequential amendments to the Principal Act.

Clause 59 makes consequential amendments to the Principal Act.

Clause 60 amends Schedule 1 to the Act to provide that Members of the Mental Health Review Board may be appointed for a minimum of 3 years and a maximum of 4 years. This will provide the Board with greater administrative flexibility when appointing new members.

Clause 61 amends Schedule 2 to the Act to allow the President of the Board to decide to hold a review of the renewal of a community treatment order with only one Board member. This will also allow the Board flexibility regarding the formality and style of hearings when they occur in the community.

Clause 62 amends Schedule 3 to the Act to remove the 8 year limit on membership of the Psychosurgery Review Board. The number of people who are appropriately qualified to be members of the Board are limited and the amendment will ensure the continued viability of the Board.

Clause 63 makes consequential amendments to Schedule 5 of the Principal Act.

Clause 64 makes consequential amendments to the **Sentencing Act 1991**.

Clause 65 provides that the Acts listed in Schedule 1 of the Bill are amended in the manner contained in the Schedule.