

Mental Health (Amendment) Bill

EXPLANATORY MEMORANDUM

- Clause 1 sets out the purpose of the Act.
- Clause 2 is the commencement provision.
- Clause 3 provides that in the Act the **Mental Health Act 1986** is called the Principal Act.
- Clause 4 amends sections 15A, 15B, 30(1)(a) and 36 and inserts new subsections (2A) and (2B) into section 36 of the Principal Act. The effect of these amendments is to clarify and consolidate the exercise of powers by the Mental Health Review Board concerning persons subject to community treatment orders and restricted community treatment orders where the continued detention of a person subject to such an order is reviewed or is the subject of an appeal.
- Clause 5 amends section 75(1) of the Principal Act, the effect of which is to broaden the definition of "occupier" in section 75 to include a partnership or unincorporated association that is in control of the premises.

The clause also repeals sections 75(3)(a) and 77(2)(a), amends sections 76(1)(b), 78(2) and 80 and inserts a new section 78(3). The effect of this is that references in Division 2 of Part 5 of the Principal Act to prescribed forms are removed and the relevant provisions refer instead to prescribed particulars or prescribed details which must be specified. A licence, an application for a licence and an application for the renewal of a licence must specify the prescribed particulars (sections 76(1)(b), 75(3)(b) and 77(2)(b) respectively). The holder of a licence may apply to the Secretary for the licence to be amended as specified in the application (section 78) and an application must specify the prescribed particulars. A holder of a licence must submit a return to the Department specifying the prescribed details in respect of electroconvulsive therapy in accordance with section 80.

This clause also amends section 75(5)(c) and 76(2)(d), the effect of which is to remove references to prescribed standards and conditions in relation to equipment to be used in the performance of electroconvulsive therapy. The standards and conditions referred to in these sections have never been prescribed. The amendment to section 75(5)(c) requires the Secretary, in considering an application for a licence under section 75, to consider, among other things, the suitability of the equipment to be used in the performance of electroconvulsive therapy. The effect of the amendment to section 76(2)(d) is that one of the grounds upon which the Secretary may cancel a licence issued under section 75 is where the equipment on the premises is no longer suitable.

Finally, the clause repeals section 77(4), the effect of which is to remove the Secretary's discretion to obtain a report from the Mental Health Review Board before considering an application for the renewal of a licence under section 77. This reference is redundant because, as a result of previous amendments, the Board no longer receives statutory returns or reports in relation to electroconvulsive therapy.

- Clause 6 amends section 85(2) of the Principal Act, the effect of which is to remove the reference in this section to the prescribed form. The register required to be kept under section 85(2) by each approval mental health service in relation to major non-psychiatric treatment must contain the prescribed details in accordance with section 85(3).
- Clause 7 amends section 96(2) of the Principal Act, the effect of which is to provide that the authorised psychiatrist has such powers, duties, functions and immunities as are conferred or imposed upon the authorised psychiatrist by or under the Principal Act or any other Act.
- Clause 8 substitutes a new Division 3 of Part 6 of the Principal Act. The effect of new Division 3 is that a new definition of "community support services" is inserted and bodies which are funded by the Secretary to the Department of Human Services to provide community support services will be funded by the Secretary as "agencies" under section 17A of the **Health Services Act 1988**. Bodies funded by the Secretary to provide community support

services will no longer be registered or funded under the Principal Act.

The guiding principles for an agency providing community support services are set out in new section 99. New section 100 deals with the appointment of an administrator to an agency providing community support services. It provides, among other things, that if the Minister is satisfied that an agency providing community support services—

- is inefficiently or incompetently managed; or
- has failed to provide effective services in accordance with the principles specified in section 99; or
- has breached or failed to comply with any provision of any funding agreement with the Secretary—

the Minister may recommend to the Governor in Council that an administrator be appointed.

Clause 9 amends section 105(2)(b) of the Principal Act, the effect of which is to provide that, subject to the general direction and control of the Secretary, the chief psychiatrist has such powers, duties, functions and immunities as are conferred or imposed upon the chief psychiatrist by or under the Principal Act or any other Act.

This clause also amends section 106(1) by inserting a definition of "quality assurance committee", being the committee established by new section 106AC which is inserted by clause 10 of the Bill. This clause also contains various other consequential amendments to section 106(1) as a result of the insertion of new Division 3 of Part 6 (clause 8) and new section 106AC (clause 10).

This clause also substitutes a new section 106(4) of the Principal Act, the effect of which is to insert a third ground upon which the chief psychiatrist or an authorised officer may visit a psychiatric service: namely, if the chief psychiatrist considers it necessary to do so in the course of the duty of the chief psychiatrist or authorised officer as a member of the quality assurance committee.

Finally, the clause amends section 106(6) of the Principal Act, the effect of which is to remove the right of a person, other than

a patient in an approved mental health service, to refuse the chief psychiatrist or an authorised officer access to his or her medical records. Section 106(6)(b) of the Principal Act currently provides that a person, other than a patient in an approved mental health service, has the right to refuse the chief psychiatrist or an authorised officer access to his or her medical records.

Clause 10 inserts new section 106AC into the Principal Act, the effect of which is that a quality assurance committee is established by the Act. The committee consists of the chief psychiatrist and each authorised officer within the meaning of section 106(1) and has the function set out in new section 106AC(3).

Clause 11 substitutes a new paragraph (b) for paragraphs (b) and (c) in the definition of "mental health service" in section 107 of the Principal Act. This is a consequential amendment as a result of the insertion of new Division 3 of Part 6.

This clause also amends section 114 of the Principal Act, the effect of which is to remove the reference in section 114 to the prescribed form and replace it with a reference to prescribed particulars which must be specified. The person in charge of a mental health service must keep a record specifying the prescribed particulars of visits by community visitors in accordance with section 114.

This clause also amends section 116(3) by substituting "Community (Psychiatric Services) Visitors Board" for "Board" in order to clarify the reference to "Board" in that section.

Clause 12 substitutes "relevant psychiatric service" for "psychiatric service" (wherever occurring) and for "psychiatric health service" in the definition of "person to whom this section applies" in section 120A(1). The effect of this is to make this definition consistent with the definition of "relevant psychiatric service" in section 120A(1).

This clause also contains various consequential amendments to section 120A(1) of the Principal Act as a result of the insertion of new Division 3 of Part 6 by clause 8.

Clause 13 repeals sub-clause (3) in clause 2 of Schedule 1, the effect of which is to remove an inconsistency between sub-clauses(1)(b) and (3) in that clause.

This clause also amends clause 1 of Schedule 2 to correct a typographical error.

