

Mental Health (Interstate Provisions) Bill

EXPLANATORY MEMORANDUM

Outline

The Bill makes various amendments to the **Mental Health Act 1986** to enable agreements to be reached with other States to allow for admission, apprehension and transfer of involuntary patients across State borders.

Clause Notes

Clause 1 sets out the purposes of the Bill.

Clause 2 is the commencement provision.

The provisions of the Act will come into force when the Act receives the Royal Assent.

Clause 3 inserts a new Part 5A into the **Mental Health Act 1986**. The new Part 5A consists of sections 93A to 93L.

New section 93A provides definitions for a number of terms used in Part 5A.

- "corresponding law" is a law about mental health in another State which is recognised under new section 93B.
- "corresponding order" is an order in another State similar to a community treatment order and which is recognised under new section 93B.
- "interstate mental health facility" is a hospital in a participating State which can admit involuntary patients under the laws of that State.
- "interstate authority" is the person in an interstate mental health facility who has similar functions to the authorised psychiatrist under the Mental Health Act.
- "participating State" is a State which has a corresponding law and which has a Ministerial Agreement under new section 93C with this State.

- "prescribed person" has the same meaning as in section 9 of the Mental Health Act.
- "State" includes a Territory.

New section 93B sets out the procedure for recognition of corresponding laws and orders. Under sub-section (1) the Governor in Council may declare that a law of another State is a corresponding law. Sub-section (2) allows for the declaration of corresponding orders as part of the declaration of corresponding laws.

New section 93C allows the Minister to enter agreements with Ministers of other States about administrative matters relating to the provisions of the new Part 5A.

New section 93D allows certain persons who have functions under the Mental Health Act to exercise powers which are conferred on them under corresponding laws. This will enable these persons to perform functions or exercise powers where a participating State has laws regarding interstate transfer and apprehension.

New section 93E allows for the transport of people to a hospital in a participating State. New section 93E(1) provides that a person who could be taken to an approved mental health service under Division 2 of Part 3 of the Act can be taken to an interstate mental health facility. Sub-section (2) provides for a request and recommendation to be addressed to an interstate mental health facility.

Sub-section (3) sets out those people who are able to transport a person to an interstate mental health facility and sub-section (4) sets out the powers of restraint and sedation if this is necessary for safe transport of the person.

New section 93F provides that people who have been detained in a participating State to be transported for admission to a mental health facility in that State can be transported and admitted to an approved mental health service in Victoria.

New section 93F(2) sets out those people who are able to transport a person who is being admitted to a Victorian approved mental health service from interstate.

New section 93F(3) states that where someone is admitted to an approved mental health service under these provisions the admission procedures in

Division 2 of Part 3 of the Mental Health Act apply. Paragraph (a) provides for the situation where documents have been completed in a participating State which would facilitate admission in that State. Where this has occurred, but the person has been brought to an approved mental health service, these documents will be recognised as if they were a request and recommendation. Paragraph (b) provides that where someone has been brought to an approved mental health service without documentation from the other State, they can be detained to allow for a request and recommendation to be completed. Paragraph (c) clarifies that it is not necessary for a person to be taken to the approved mental health service for the purpose of admission.

New section 93G provides a procedure for the transfer of involuntary patients from an approved mental health service to an interstate mental health facility. An authorised psychiatrist or the Chief Psychiatrist may make an order for transfer if the criteria in sub-section (1)(a) to (d) are met. These criteria are similar to the criteria for transfer within Victoria under section 39 of the Act. The requirement in new sub-section 93G(1)(a) ensures that a person cannot be transferred interstate if they could have been discharged under other provisions of the Mental Health Act.

New section 93G(2) and (3) provides that a transfer order must be reviewed by the Mental Health Review Board without delay. The Board may confirm the transfer or direct that the patient continue to be detained. Under sub-section (5) a transfer order does not take effect until it is confirmed by the Board. Sub-section (6) clarifies that once the transfer has occurred the patient is no longer an involuntary patient under the Mental Health Act.

Sub-section (7) sets out those people who are able to transport a person to an interstate mental health facility and sub-section (8) sets out the powers of restraint and sedation if this is necessary for safe transport of the patient.

New section 93H provides powers under the Mental Health Act to receive patients transferred from another State. New section 93H(2) sets out those people who are able to transport a person who is being transferred to a Victorian approved mental health service from an interstate mental health facility.

New section 93H(3) states that where someone is admitted to an approved mental health service under these transfer provisions, the admission procedures in Division 2 of Part 3 of the Mental Health Act apply. Paragraph (a) provides for the situation where a transfer document has been completed in a participating State. Such a document will be recognised as if it was a request and recommendation. Paragraph (b) provides that where someone has been

transferred but the interstate system does not require documentation, the patient can be detained to allow for a request and recommendation to be completed. Paragraph (c) clarifies that it is not necessary for a person to be taken to the approved mental health service for the purpose of admission.

New section 93I provides that a community treatment order can be made or have effect if the patient is outside Victoria.

New section 93J states that a person in another State who can exercise powers under a community treatment order recognised as a "corresponding order" can exercise those powers in Victoria.

New section 93K allows for the apprehension of patients absent from interstate mental health facilities without leave. Sub-section (1) permits people authorised under a corresponding law, or those people who could apprehend a Victorian patient absent without leave, to apprehend a patient absent from an interstate mental health facility. Sub-section (2) permits the recognition of interstate warrants for apprehension of patients. Sub-section (3) provides that where an interstate patient is apprehended in Victoria, they must be returned to a mental health facility in the State from which they absconded, or admitted to an approved mental health service in this State. Sub-section (4) sets out the powers of restraint and sedation if this is necessary for safe transport after apprehension.

New section 93L provides for those circumstances where a patient absent without leave from an approved mental health service in Victoria is apprehended in a participating State. If this occurs, people authorised under a corresponding law, or those people who could apprehend a Victorian patient absent without leave, may escort the patient back to an approved mental health service.

Clause 4 contains consequential and technical amendments.

Clause (4)(1)(a) makes amendments consequential on the change of name of the Department.

Clause (4)(1)(b) amends the definition of "involuntary patient" in the Mental Health Act to include patients admitted under the new Part 5A.

Clause (4)(1)(c) makes amendments consequential on the change of name of the Department.

Clause (4)(1)(d) makes consequential amendments which ensure that the functions of the Mental Health Review Board reflect the new role of reviewing interstate transfer orders.

Clause (4)(1)(e) corrects a reference to the Medical Practitioners Board.

Clause 4(2) amends Schedule 2 to the Mental Health Act, which relates to the procedures of the Mental Health Review Board. The amendment enables the President to decide whether a review of an interstate transfer order is to be heard by a single member division of the Board or a three member division of the Board.

