

Health and Other Legislation Amendment Bill 2021

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House

Title of the Bill

Health and Other Legislation Amendment Bill 2021

Policy objectives and the reasons for them

The Queensland Government has agreed to deliver essential state services to Norfolk Island under the Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island with the Australian Government.

On 1 January 2022, Queensland Health commenced clinical governance support and coordination of health service pathways, including mental health services. One aspect of this mental health service support involves oversight of treatment and care for patients who have been identified by the Norfolk Island treating physician as requiring treatment on an involuntary basis beyond services available on Norfolk Island, for example, because the patient requires admission to a specialist psychiatric inpatient facility.

Norfolk Island is a remote community with one health facility. Treatment and care for patients with acute, urgent or complex mental health concerns may require infrastructure and resources that facilitate a higher level of support. On occasions, it may be necessary to transfer involuntary mental health patients from Norfolk Island to Queensland.

The *Mental Health Act 2016* and *Mental Health Regulation 2017* allow for the transfer of involuntary patients within Australia by recognising mental health legislation of other states and internal territories as corresponding laws. As currently drafted, the Mental Health Act does not authorise the law of an external Australian territory to be prescribed as a corresponding

law, because it only allows the law of a state to be prescribed as a corresponding law. The definition of “state” in the *Acts Interpretation Act 1954* is limited to states of the Commonwealth of Australia, the Northern Territory and the Australian Capital Territory. The Mental Health Regulation requires amendment to prescribe the *Mental Health Act 1996* (Norfolk Island) as a corresponding law to authorise the transfer of involuntary patients from Norfolk Island.

The objective of the amendments is to ensure that involuntary patients on Norfolk Island can lawfully be transferred to and treated in Queensland if there is a clinical need.

Achievement of the Objectives

The policy objectives are achieved by:

- amending the Mental Health Act to provide that Norfolk Island is taken to be a state for the purpose of the Act;
- amending the Mental Health Regulation to prescribe the Norfolk Island Mental Health Act as a corresponding law.

These changes enable application of Queensland’s existing framework for transfer of interstate patients to apply to patients requiring transfer from Norfolk Island.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives. As the definition of “state” in the Acts Interpretation Act only refers to states of the Commonwealth of Australia, the Northern Territory and the Australian Capital Territory, an amendment is required to the Mental Health Act to enable Norfolk Island to be taken to be a state for the purposes of the Act.

Estimated Cost for Government Implementation

There are no costs associated with the amendments. The costs of providing health services to Norfolk Island are being met fully by the Commonwealth under the Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island.

Consistency with Fundamental Legislative Principles

The amendments are consistent with the fundamental legislative principles (FLPs) in section 4 of the *Legislative Standards Act 1992*.

The amendments result in the potential for members of the Norfolk Island community with serious mental health issues to be transferred to and treated in Queensland on an involuntary basis. This engages FLPs relating to the requirement that legislation has sufficient regard to the rights and liberties of individuals, under section 4(2)(a) of the Legislative Standards Act.

The Legislative Standards Act states that whether the legislation has sufficient regard to the rights and liberties of individuals depends on, for example, whether the legislation makes rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a)).

While the amendments will result in existing administrative power having the potential to impact the rights and liberties of a new cohort of patients, these patients will be afforded the same robust safeguards in the Mental Health Act that apply to other involuntary patients transferred to Queensland from within Australia. The Mental Health Act requires strict statutory decision-making criteria to be met for a person from another jurisdiction to be transferred to and treated in Queensland, whether the transfer is approved by an administrator of an authorised mental health service (under section 355) or by the Mental Health Review Tribunal (under part 10, division 1).

The provisions of the Health and Other Legislation Amendment Bill 2021 that were introduced to Parliament on 1 December 2021 will, if passed, further strengthen the rights of individuals when considering transfers under the Mental Health Act. Clause 75 of the Bill (which amends section 355) and clauses 85 to 90 of the Bill (which amend sections 513 to 520) will transition transfer criteria from a ‘best interests’ approach to a stronger rights-based approach. If these provisions are passed, the criteria for transfer to Queensland will require that regard must be had to, as far as practical, the views, wishes and preferences of the patient. These same provisions will apply to patients subject to involuntary transfers from Norfolk Island.

The Mental Health Review Tribunal will be required to approve the transfers of Norfolk Island forensic patients into Queensland. Transfer decisions by the Mental Health Review Tribunal can be appealed to the Mental Health Court. In addition, once patients arrive in Queensland, their treatment and care under the Mental Health Act is limited to specific powers of authorised persons subject to strict criteria and, according to the circumstances, review by an authorised psychiatrist, the Mental Health Review Tribunal and/or the Mental Health Court.

Following the agreement to transfer of an interstate civil patient from Norfolk Island by an authorised mental health service administrator, section 355 of the Mental Health Act requires that an authorised doctor must conduct an assessment within six hours of the person’s arrival at an authorised mental health service. For a treatment authority providing for involuntary treatment to be made, the doctor must be satisfied that the treatment criteria specified in section 12 apply to the person and that none of the less restrictive means of treatment, as provided by section 13, are viable alternatives to involuntary treatment. Where this assessment results in the making of a treatment authority by an authorised doctor who is not a psychiatrist, section 56 requires that an authorised psychiatrist must review the treatment authority within three days and determine whether the criteria are satisfied and the treatment authority should continue. Involuntary treatment under a treatment authority is subject to review by the Mental Health Review Tribunal. Decisions by the Mental Health Review Tribunal regarding treatment authorities can be appealed to the Mental Health Court.

The amendments therefore provide administrative power that is sufficiently defined and appropriately reviewable.

Consultation

Consultation on the procedures for transfer of patients from Norfolk Island has occurred with Metro North Hospital and Health Service (who is providing clinical support services under the Intergovernmental Agreement), the Norfolk Island Health and Residential Aged Care Service and the Commonwealth Government.

All parties support the amendments as necessary to facilitate involuntary patient transfers from Norfolk Island.

Consistency with legislation of other jurisdictions

Queensland is the only State currently providing mental health support services to Norfolk Island. Therefore, no other Australian jurisdictions have legislation specifically dealing with this issue.

Notes on provisions

Amendment of the Mental Health Act

Amendment 1 inserts new division 3A (Amendment of Mental Health Act 2016) into part 2 of the Bill.

Clause 9A states that the division amends the *Mental Health Act 2016*.

Clause 9B inserts new section 14A. New section 14A provides that for the Mental Health Act, the Territory of Norfolk Island is taken to be a state.

Amendment of the Mental Health Regulation

Amendment 2 inserts new Division 3B (Amendment of Mental Health Regulation 2017) into the Bill.

Clause 9C states that the Division amends the *Mental Health Regulation 2017*.

Clause 9D inserts a reference to the *Mental Health Act 1996* (Norfolk Island) into the list of corresponding laws at schedule 1, section 1. This prescribes the Mental Health Act of Norfolk Island as a corresponding law for the purposes of sections 355(7), 357(4), 369(2), 370(1), 5(b) and (6), 520(2)(c) and 527(2)(c) of the Mental Health Act. These sections:

- define civil interstate orders for jurisdictions recognised as corresponding law;
- allow the transport of persons in Queensland who appear to have a mental illness and require assessment to an interstate mental health service where allowed under corresponding law;
- allow Queensland to receive an interstate person transported to an authorised mental health service for assessment under a corresponding law; and
- ensure that both Queensland authorised persons and persons authorised under corresponding law have the powers required to transport involuntary patients transferring into or out of Queensland.

Clause 9E inserts a reference to the Mental Health Act of Norfolk Island into the list of corresponding laws at schedule 1, section 2. This prescribes the Mental Health Act of Norfolk Island as a corresponding law for the purposes of sections 368(1)(b) and (2) of the Mental Health Act, which allow authorised persons to apprehend persons for whom a warrant for their apprehension has been issued under a corresponding law of another State.

Clause 9F inserts a reference to the Mental Health Act of Norfolk Island into the list of corresponding laws at schedule 1, section 3. This prescribes the Mental Health Act of Norfolk Island as a corresponding law for the purposes of the definition of *interstate forensic order* under section 513 of the Mental Health Act, which defines an order made under a corresponding law of another State that provides for similar matters to a forensic order.

Clause 9G inserts the Mental Health Act of Norfolk Island into the list of corresponding laws at schedule 1, section 4. This prescribes the Mental Health Act of Norfolk Island as a corresponding law for the purposes of the definition of *interstate transfer requirements* under

sections 513 and 521 of the Mental Health Act. Both these definitions relate to the transfer requirements under a corresponding law of the State in which an interstate forensic order was made.

Consequential amendments

Amendment 3 amends the note in clause 51 of the Bill to include a cross-reference to the amendments to the Mental Health Act in Part 2, division 3A.

Amendment 4 amends the long title of the Bill to include a reference to the Mental Health Regulation.

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