

Health and Ambulance Services Committee

Mental Health Bill 2015 and the Mental Health (Recovery Model) Bill 2015

Report No. 9, 55th Parliament

Government Response

The Government has considered the Committee's recommendations in this report and provides the following response to the recommendations directed to Government:

Recommendation 1

The Committee recommends that the Minister for Health and Minister for Ambulance Services advise the House of the benefits of not having separate assessment criteria and treatment criteria in the Mental Health Bill 2015.

Government response:

The Bill continues the approach under the current Act of having a two-stage process to the making of an involuntary treatment order (renamed to 'treatment authority' under the Bill). Under the current Act, a recommendation for assessment may be made if the 'assessment criteria' apply, while an involuntary treatment order may be made if the 'treatment criteria' apply. The assessment criteria are a re-worded version of the treatment criteria, which indicate that the elements of the treatment criteria may be met.

Under the Mental Health Bill 2015:

- a recommendation for assessment may be made if the treatment criteria may apply and there appears to be no less restrictive way of treating the person, and
- a treatment authority may be made if the treatment criteria apply and there is no less restrictive way of treating the person.

The benefit of this approach is that it simplifies the criteria for making a recommendation for assessment and a treatment authority in a way that ensures the two stages are closely linked.

Recommendation 3

The Committee recommends that the Minister for Health and Minister for Ambulance Services advise the House of the safeguards under the Mental Health Bill 2015 for patients in regional/rural and remote areas, particularly regarding making an assessment of a person subject to a recommendation for assessment, and reviewing a treatment authority if not made by a psychiatrist.

Government response:

The following apply in rural and remote areas designated by the chief psychiatrist:

- the same authorised doctor may make a recommendation for assessment, and perform the actual assessment, if the authorised doctor is the only authorised doctor available

- where an authorised psychiatrist reviews the making of a treatment authority by an authorised doctor who is not a psychiatrist, the review must take place within 7 days, rather than 3 days, if it is not reasonably practicable to perform the review in 7 days.

These provisions have been included in recognition of the workforce challenges in rural and remote areas of the State. It is important in these circumstances, that persons with an acute mental illness can receive treatment and care under the Act, where necessary.

It is, however, important that these arrangements do not adversely affect patient's rights. In all instances, the making of recommendations for assessments and treatment authorities are recorded on the State-wide information management system. As a safeguard for these arrangements, the chief psychiatrist will monitor the way in which recommendations for assessments and treatment authorities are made in rural and remote areas.

It should also be noted that the removal of restrictions on the use of audio-visual technology under the Bill will enable more examinations and assessments to be performed this way which will reduce the need to utilise these provisions.

The department will review the effectiveness of these provisions within 2 years of the commencement of the legislation.

Recommendation 5

That the Minister for Health and Minister for Ambulance Services advise the House how the Government intends to address the concerns expressed by the Office of the Public Advocate and the Office of the Public Guardian regarding the 'less restrictive way'.

Government response:

As advised to the Committee by the Health Department, there are extensive safeguards under the Bill for persons being treated under an advance health directive, or with the consent of an attorney and guardian. This is in addition to the protections available under the *Powers of Attorney Act 1998*, the *Guardianship and Administration Act 2000* and the *Public Guardian Act 2014*, including the Community Visitors Program.

As part of the implementation of the Bill, the Department of Health will provide detailed information to stakeholders on these safeguards.

The Chief Psychiatrist and the Public Guardian have agreed to enter into an MOU on the protection of persons receiving treatment and care in authorised mental health services to ensure that the relevant statutory functions work together in the patients' best interests.

The department will review the effectiveness of these provisions within 2 years of the commencement of the legislation.

Recommendation 7

The Committee recommends that, in the event that either of the Bills pass, the following provisions in the Mental Health Bill 2015 relating to nominated support persons be retained:

- to allow the appointment of up to two nominated support persons
- relating to appointment and revocation of nominated support persons
- to allow a nominated support person to request a psychiatrist report where the patient is charged with a serious offence and was subject to a treatment authority, forensic order or treatment support order

Government response: Supported

The provisions are to be retained in the Mental Health Bill 2015.

Recommendation 8

The Committee recommends that, in the event that either Bill pass, the provisions in the Mental Health Bill 2015 which require the Chief Psychiatrist to develop policies relating to mechanical restraint, seclusion, medication and physical restraint be retained.

Government response: Supported

The provisions are to be retained in the Mental Health Bill 2015.

Recommendation 9

The Committee recommends that the Minister for Health and Minister for Ambulance Services require the Chief Psychiatrist to actively engage with all relevant stakeholders on the development of policies relating to mechanical restraint, seclusion, medication and physical restraint.

Government response: Supported

The implementation arrangements for the Bill will involve consultation with key stakeholders on the development of Chief Psychiatrist Policies, including those related to mechanical restraint, seclusion, medication and physical restraint. The Queensland Mental Health Commissioner will be included in these consultations.

Recommendation 10

The Committee recommends that, in the event that either Bill pass, the provisions in the Mental Health Bill 2015 which distinguish between mechanical and physical restraint, and specify the circumstances in which a patient with a mental illness may be physically restrained, be retained.

Government response: Supported

The provisions are to be retained in the Mental Health Bill 2015.

Recommendation 11

The Committee recommends that, in the event that either Bill pass, the provisions in the Mental Health Bill 2015 that provide for and regulate the administration of medication be retained.

Government response: Supported

The provisions are to be retained in the Mental Health Bill 2015.

Recommendation 12

The Committee recommends that, in the event either Bill pass, the following common provisions should be retained:

- definitions of psychosurgery and non-ablative neurosurgical procedure,
- prohibition of psychosurgery, and
- prescribing non-ablative neurosurgical procedures as a regulated treatment.

Government response: Supported

The provisions are to be retained in the Mental Health Bill 2015.

Recommendation 13

The Committee recommends the offence and penalty provisions in the Mental Health Bill 2015 relating to performing ECT on a person other than under the proposed legislation be retained in the event that either Bills passes the House.

Government response: Supported

The provisions are to be retained in the Mental Health Bill 2015.

Recommendation 14

The Committee recommends that, in the event that either Bill pass, the offence and penalty provisions in the Mental Health Bill 2015 relating to performing a non-ablative neurosurgical procedure on a person for the purpose of treating the person's mental illness, other than under the legislation, be retained.

Government response: Supported

The provisions are to be retained in the Mental Health Bill 2015.

Recommendation 15

The Committee recommends that the Bills be amended to require authorised mental health service to notify the Public Guardian when:

- minors are admitted to a high-secure and adult unit; and
- whenever seclusion, physical or mechanical restraint is used on a minor.

Government response: Supported

The Minister for Health will introduce amendments to the Bill in support of this recommendation in the Parliament.