



Speech by

Hon. Stephen Robertson

MEMBER FOR STRETTON

Hansard Thursday, 11 October 2007

MENTAL HEALTH AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. S ROBERTSON (Stretton—ALP) (Minister for Health) (11.30 am): I move—

That the bill be now read a second time.

I am pleased to introduce this bill to the House. The main purpose of this bill is to amend the Mental Health Act 2000 to implement the remaining legislative recommendations from Mr Brendan Butler's final report of the review of the Mental Health Act 2000, *Promoting balance in the forensic mental health system*. I table the Queensland government response document to the final report for all members.

Tabled paper: Queensland Government Response to the Final Report—Review of the Queensland Mental Health Act 2000, October 2007.

The bill also amends a number of other health portfolio acts to ensure the ongoing effective operation of Queensland Health's legislative base. For example, the Food Act 2006 is to be amended to ensure the food safety program and food safety supervisor requirements of the act apply to existing food businesses as well as new businesses on commencement of those provisions. While the food safety program and supervisor provisions commence from 22 February 2008, enforcement of the offence provisions will not begin until 1 July 2008 to allow food businesses time to comply with the requirements of the act.

The bill also amends the Medical Practitioner Registration Act 2001 to deem that an interstate medical practitioner required to perform an autopsy in Queensland at the direction of a coroner be registered in the category of registration corresponding to his or her interstate registration. The deemed registration will only be for the purpose of conducting the autopsy and will ensure the coroner is able to source appropriate interstate specialists where necessary.

Finally, the bill makes a minor amendment to the Nursing Act 1992 to give the Minister of Health the same power of direction in relation to the Queensland Nursing Council as currently exists in relation to the various health practitioner registration boards.

The most significant amendments I am introducing today are those to the Mental Health Act 2000. Honourable members will recall that last year I commissioned Mr Brendan Butler to conduct an independent review of the act. The review examined the effectiveness of current legislative provisions and administrative arrangements in taking account of the rights and interests of victims and their families. This included whether amendments were needed to further enable victims and their families to be involved in decision making in the forensic mental health system. The review considered whether there was an appropriate balance between the government's responsibilities towards the safety and protection of the community and its responsibilities to provide appropriate care and treatment for patients under forensic mental health orders.

Mr Butler's final report was delivered to the then Premier and me in December 2006, containing 106 recommendations for changes to current arrangements and legislation. The recommendations provided for

the establishment of new support systems to better balance the needs and rights of victims and the community with the needs and rights of forensic and classified patients.

As members will recall, earlier this year the parliament passed the first round of amendments arising from the final report into the Health and Other Legislation Amendment Act 2007. I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

Leave granted.

Those amendments, which commenced on 1 July 2007, gave effect to 10 of the recommendations made by Brendan Butler to provide a clearer focus in the Mental Health Act on the rights and needs of victims of crime and their families.

The new proposed amendments I'm introducing today will give effect to a further 29 recommendations of the Butler Report.

In addition, these amendments will also support the implementation of some of the recommendations of the Final Report concerning administrative and procedural aspects of the forensic mental health system.

The Butler Report considered in some detail the arrangements in place for victims of crime in the corrective services and justice systems.

The corrective services information register and the Director of Public Prosecution's victim liaison officer service recognise that victims of crime are often in need of support when navigating through our justice system.

Until now, the support available to victims of offences committed by people with mental illness has been limited.

To address this, the Butler Report recommended a Victim Support Service be established and similar information disclosure arrangements as those employed in corrective services be introduced.

Queensland Health is currently setting up a new Victim Support Service with a view to commence its operation early in 2008.

This service will build on those currently provided by the Queensland Health Victim Support Coordinator.

The review viewed this role as being of significant value in supporting victims.

To support the more expansive functions of the Victim Support Service recommended by the review, this bill amends the Mental Health Act to provide for the giving of certain information to victims.

Specifically the amendments introduce two new information orders, a Classified Patient Information Order and a Forensic Patient Information Order.

The Director of Mental Health will be able to issue Classified Patient Information Orders to victims, immediate family members of deceased victims and parents or guardians of child victims upon application.

The Mental Health Review Tribunal will likewise be able to issue Forensic Patient Information Orders to victims and also to others with a sufficient personal interest, such as parents of the patient.

The purpose of the Information Orders is to permit the disclosure of certain information to a victim about a classified or forensic patient.

Information that may be provided under an information order includes such matters as:

the fact that the patient is a classified or forensic patient and is detained in an authorised mental health service;

the fact that limited community treatment has been approved for the patient, and any conditions of the treatment relevant to the safety of the victim;

the fact that the patient is absent without approval where the absence is relevant to the victim; and

if the patient is moved from one authorised mental health service to another.

To safeguard the rights and needs of the patient, under no circumstances will information about the patient's mental illness or treatment plan be disclosed under these orders.

The purpose of providing information to victims is to ensure victims feel empowered in the forensic mental health system and do not feel further 'victimised' by the necessarily legal and bureaucratic processes of the system.

As you know, Mr Butler stressed the needs of victims must continue to be balanced against the needs of patients and their right of privacy of their health information.

Consequently, all applications for Classified Patient Information Orders and Forensic Patient Information Orders must include a declaration signed by the applicant, and anyone the applicant nominates to receive information on their behalf, to the effect that they will not disclose the information received under the information order for public dissemination.

There is no monetary or criminal penalty imposed for breach of the declaration. However, the Director and the Tribunal will be able to revoke a victim's information order if the victim discloses information for public dissemination.

The Director or the Tribunal will be required to provide the victim with the opportunity to make a submission on the circumstances surrounding the disclosure before revoking an order.

This requirement recognises that sometimes disclosures occur that are not intentional and it would be unfair to revoke under circumstances that were beyond the victim's control.

The Mental Health Act already contains an offence provision for anyone—including the media—who deliberately publishes information disclosed under a Tribunal issued Notification Order.

Safety will remain the paramount concern.

Information orders, whether they be for classified patient information or forensic patient information, must not be made if the subsequent disclosure of information to the applicant under the order would cause either serious harm to the health of the patient, or put the safety of the patient or another person at risk.

The Victim Support Service will maintain a register for all information orders and will act as the conduit for all information disclosed under an order.

In this role the Victim Support Service will be able to provide advice on the meaning and consequence of the information provided.

In addition, the service will provide advice and assistance to victims in submitting material to the Tribunal for hearings and in understanding decisions of the Tribunal and the Mental Health Court.

The amendments in this bill recognise a new legislative category of forensic patient.

Forensic patients who have been charged with murder, manslaughter, attempted murder, rape, assault with intent to rape or dangerous driving causing death will be considered Special Notification Forensic Patients.

The amendments provide new requirements for mental health services and the Tribunal when making decisions concerning Special Notification Forensic Patients to ensure appropriate safeguards are in place to protect public safety.

Other amendments to the Mental Health Act will align certain processes of the Mental Health Review Tribunal with those of the Mental Health Court.

For example, statements by victims and concerned persons to proceedings of the Tribunal must be sworn.

The swearing of submissions to the Tribunal will assist in ensuring the accuracy and truthfulness of material before the Tribunal.

The Tribunal will also be required to give reasons about whether and how submissions from victims or concerned persons are taken into account.

Currently the Tribunal only provides reasons on request. The amendments will make the provision of reasons automatic upon making a decision.

The Victim Support Service will assist victims to provide submissions and to understand the Tribunal's reasons on the consideration of those reasons.

Finally, Mr Speaker, the Butler Review considered the role of the Attorney-General in decision making about the continuation or discontinuation of criminal proceedings involving involuntary patients who have committed offences.

The Final Report found that in practice the Attorney-General often seeks the advice of the Director of Public Prosecutions before making a decision concerning criminal proceedings.

This coupled with the obvious fact that it is impractical for a minister to be personally responsible for the large volume of decisions often relating to relatively minor offences, prompted the review to recommend that the Director of Public Prosecutions replace the Attorney-General under the Act for this purpose.

The Director of Public Prosecutions is an independent officer, appropriately situated to make decisions concerning the continuation or discontinuation of criminal proceedings.

Consequently, the amendments provide for the Director of Public Prosecutions to consider any references made by the Director of Mental Health.

The review recognised that there can be significant delays in Mental Health Court considerations, attributed to staff turnover, work pressures on psychiatrists and an increased workload of the Mental Health Court.

To ease the burden on the Mental Health Court, the Final Report also recommends that the Director of Mental Health be able to refer serious indictable offences to the Director of Public Prosecutions in certain circumstances.

Serious indictable offences may only be referred to the Director of Public Prosecutions if the Director of Mental Health reasonably believes that the patient is fit for trial and was not of unsound mind at the time of the offence.

It continues to remain open for the patient's legal representative to refer the charges to the Mental Health Court if the legal representative or patient considers it appropriate.

This referral power is in addition to the Director of Mental Health's existing authority to refer patients charged with simple offences and minor indictable offences to the Director of Public Prosecutions.

The amendments in this bill to the Mental Health Act will provide a sound framework for strengthening the forensic mental health processes, providing safeguards for the community and for providing assistance and support to victims.

They complement the significant administrative changes occurring to implement all 106 of Mr Butler's recommendations.

They will help to restore balance to the forensic mental health system by providing greater recognition and empowerment of victims.

The Review of the Mental Health Act 2000 was a significant undertaking and I thank Mr Butler and his review team for conducting it and providing such a comprehensive and considered report.

The development of a bill such as this involves extensive consultation with stakeholders. I would like to take this opportunity to thank all those stakeholders who were involved with the development of the bill.

I commend the bill to the House.