




Speech By
Hon. Cameron Dick

MEMBER FOR WOODRIDGE

Record of Proceedings, 17 September 2015

MENTAL HEALTH BILL

Introduction

 **Hon. CR DICK** (Woodridge—ALP) (Minister for Health and Minister for Ambulance Services) (3.01 pm): I present a bill for an act to provide for the treatment and care of people who have mental illnesses and for other purposes, to repeal the Mental Health Act 2000, to amend this act, the Criminal Code, the Forensic Disability Act 2011, the Powers of Attorney Act 1998 and the Public Health Act 2005, and to amend the acts mentioned in schedule 4 for particular purposes. I table the bill and the explanatory notes and I nominate the Health and Ambulance Services Committee to consider the bill.

Tabled paper: Mental Health Bill 2015 [[1126](#)].

Tabled paper: Mental Health Bill 2015, explanatory notes [[1127](#)].

Today is an historic day in the history of mental health treatment support and recovery in this state. The Mental Health Bill 2015 will repeal and replace the Mental Health Act 2000 which is 15 years old and which has not kept pace with developments in patient rights and clinical practice. As members would be aware, the government released a consultation draft of the bill for a two-month period. Nearly 100 written submissions were received during this consultation period. I would like to take this opportunity to thank all stakeholders and citizens of Queensland who took the time to participate in meetings and workshops and who made submissions on the draft bill. Many of those individuals and groups are in the gallery of the Legislative Assembly chamber today.

The strong engagement of stakeholders throughout the consultation period demonstrates that improvements can be made to legislation through careful and methodical engagement and consultation with the community. An overarching purpose of the bill is to provide a regulatory framework for the management of persons who are so unwell they do not have the capacity to make decisions about their own treatment and care. In these cases the bill provides a lawful authority to treat a person with a mental illness. The bill strengthens patient rights. The bill strengthens the independence of independent patient rights advisers by requiring them to be employed outside of authorised mental health services. The bill also expands the functions of these advisers, including by requiring them to work cooperatively with community visitors under the Public Guardian Act.

The bill also strengthens the requirement to consult with families, carers and other support persons. This is critical to having a recovery orientation to the treatment and care of persons with a mental illness. Under this bill this consultation must occur unless the patient specifically requests the communication does not take place, the support person is not readily available or the communication is likely to be detrimental to the patient's health and wellbeing—for example, if there is a dysfunctional family relationship. Improvements have been made to the nominated support person provisions, including by allowing persons to appoint two nominated support persons. Under the bill, nominated support persons must receive notices, can discuss confidential information with the patient's treatment team and represent or support the patient at tribunal hearings.

The bill takes a significant step forward in facilitating and promoting the use of advance health directives which give patients an opportunity to have greater control over their future healthcare needs. In response to views expressed by stakeholders, this bill will require authorised doctors to explain to a patient and document in the patient's records why an advance health directive prepared by the patient was not followed. The bill also clarifies the circumstances in which a person may be taken to a public sector health service facility for emergency examination, treatment and care. The bill achieves this by placing emphasis on high-risk individuals who need urgent examination or treatment. These provisions are included in the Public Health Act in recognition of the fact that these situations may arise due to factors such as drug or alcohol abuse, as well as from a mental illness or other health conditions.

The vast majority of involuntary patients have no connection to the criminal justice system. However, for those involuntary patients who also have interactions with the criminal justice system it is important that there be a strong legislative framework that balances treatment needs with the protection of the community. Importantly, this bill strengthens the management of risks to the community where serious unlawful acts are committed. In these circumstances the bill enables the Mental Health Court to impose a non-revoke period of up to 10 years on a forensic order for the most serious violent offences such as murder.

The bill includes significant improvements from the Mental Health Act 2000. I am pleased that the bill addresses a deficiency in the legal system in relation to actions that magistrates may take where a person appears of unsound mind at the time of an alleged offence or is unfit for trial. The bill provides that magistrates may dismiss charges in these circumstances. These provisions apply to persons with a mental illness, an intellectual disability or another mental condition. I would like to acknowledge the advocacy of Mr John and Mrs Colleen Avery who are present today. They have sought improvements in the legal system in this state to prevent vulnerable individuals from being unfairly found guilty of minor offences. This bill responds directly to these concerns by giving magistrates a clear power to dismiss a charge if a person is not fit for trial.

The bill also provides for appropriate referrals to service delivery agencies. For persons with a mental illness a magistrate may refer a person to an authorised mental health service for an examination which may result in a treatment authority being made for the person. For persons with an intellectual disability a referral may be made to a disability service agency to determine what care may be provided to the person. The provisions of this bill, along with appropriate education, training and other supports, will minimise the risk of situations such as those faced by the Avery family in the past arising again in the future.

The bill continues the Mental Health Court as the central judicial body for the forensic mental health system in Queensland. The court hears references on whether a person charged with a serious offence was of unsound mind at the time of an alleged offence or is unfit for trial. This bill also improves operational aspects of the Mental Health Court, including by enabling the court to hold a court with one assisting clinician where it is appropriate to do so. The independent Mental Health Review Tribunal also continues under the bill with the primary role of reviewing the continuation of authorities and orders made under the bill. The bill also improves operational aspects of the tribunal, including by enabling the tribunal to refer questions of law to the Mental Health Court.

The bill continues the role of the Chief Psychiatrist, who replaces the director of mental health under the current act. The Chief Psychiatrist is primarily responsible for protecting the rights of patients in authorised mental health services. The Chief Psychiatrist is to prepare policies and practice guidelines for the treatment of patients which must be publicly available.

This bill expands the controls on restrictive practices to better protect involuntary patients. In addition to provisions relating to seclusion and mechanical restraint, this bill also includes provisions to regulate the use of physical restraint in authorised mental health services. There is strong evidence that physical restraint can lead to serious harm to patients and staff. The provisions in this bill will enable the use of physical restraint to be carefully monitored to ensure that it is only used as a last resort.

The bill also ensures the appropriate use of medication on patients in authorised mental health services. This addresses a longstanding concern of patient advocates. The provisions in this bill will enable the use of medications to be carefully monitored to ensure that their use is appropriate for a patient's treatment and care. This bill removes the ability for an individual—the Chief Psychiatrist—to require a forensic patient to wear a GPS tracking device. This authority will be limited to the Mental Health Court and the Mental Health Review Tribunal, where the issues can be considered in a transparent way, free from government interference.

Other improvements from the Mental Health Act 2000 include:

- a tightening of the criteria under which a person may be placed on a treatment authority, to focus on a person's lack of capacity to consent to treatment and a risk of serious harm or deterioration;

- requiring a patient to be treated under an advance health directive or with the consent of a personal attorney or guardian instead of under a treatment authority, if the patient can be treated this way;
- replacing ‘justices examination orders’ with more tightly defined ‘examination authorities’, made by the Mental Health Review Tribunal;
- supporting patient recovery, including by providing that a patient on a treatment authority must be treated in the community unless it is not possible to meet the patient’s treatment and care needs in this way;
- the removal of the restrictions on the use of audiovisual technology, leaving it to clinicians to decide when use of this technology may be appropriate;
- the right for a patient, or a support person, to seek an independent second opinion if there are unresolved concerns with the patient’s treatment and care;
- introducing ‘treatment support orders’, which operate as a step-down order for a forensic patient as part of their recovery when it is appropriate;
- requiring the use of all mechanical restraint to be approved by the Chief Psychiatrist;
- enabling the Chief Psychiatrist to issue directions on the use of seclusion;
- introducing other protections for the use of seclusion and mechanical restraint, including through the introduction of Reduction and Elimination Plans, which are approved by the Chief Psychiatrist;
- allowing persons on an authority or order under the bill who are charged with a serious offence to request a psychiatrist report on whether the person was of unsound mind at the time of an alleged offence or is unfit for trial;
- requiring the Mental Health Review Tribunal to provide free legal representation for patients for specific types of hearings, such as where the Attorney-General is represented, for minors and for electroconvulsive therapy applications;
- strengthening safeguards for the use of electroconvulsive therapy, including by requiring the Mental Health Review Tribunal to consider all treatments for minors, while retaining the ability for emergency electroconvulsive therapy, which must then be referred to the tribunal for consideration;
- prohibiting psychosurgery, but allowing deep brain stimulation techniques to occur with the informed consent of the person and with the approval of the Mental Health Review Tribunal;
- enhancing the provisions for victims of unlawful acts, including by notifying victims of the reasons for increasing community treatment for the relevant patient; and
- improving the way that interstate transfers of involuntary patients may occur, including by requiring transfers of forensic patients to be decided by the tribunal.

This bill is part of the government’s commitment to improving mental health services in this state. The government has committed to deliver new youth residential rehabilitation facilities and self-contained residential family accommodation in Townsville. Following a number of tragic events in 2014, this government has also commenced a statewide clinical review to examine mental health sentinel events and make recommendations to improve the system.

Further, the Queensland Mental Health Drug and Alcohol Strategic Plan 2014-2019, which was developed by the Queensland Mental Health Commission, commits the Department of Health to develop a new mental health drug and alcohol services plan. Consultation and work on the services plan has commenced and will take into account the government priorities, the principles and directions established in the commissioner’s plan, and relevant quality and service standards. These initiatives, together with the Mental Health Bill 2015, will support the mental health sector to deliver services that support patient rights and deliver evidence based clinical practice.

I note that the previous LNP government introduced the Mental Health Bill 2014, which did not pass prior to the dissolution of the last parliament. Although there are important differences in the approach of this bill, the bills have many reform directions in common. In a spirit of bipartisanship, I commend the opposition for their support of these reforms. I commend the bill to the House.

First Reading

Hon. CR DICK (Woodridge—ALP) (Minister for Health and Minister for Ambulance Services) (3.14 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Health and Ambulance Services Committee

Madam DEPUTY SPEAKER (Ms Farmer): Order! In accordance with standing order 131, the bill is now referred to the Health and Ambulance Services Committee.

Portfolio Committee, Reporting Date

Hon. CR DICK (Woodridge—ALP) (Minister for Health and Minister for Ambulance Services) (3.14 pm), by leave, without notice: I move—

That, under the provisions of standing order 136, the Health and Ambulance Services Committee report to the House on the Mental Health Bill 2015 and the Mental Health (Recovery Model) Bill by 24 November 2015.