




Speech By  
**Aaron Harper**

**MEMBER FOR THURINGOWA**

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Record of Proceedings, 28 February 2017

### **MENTAL HEALTH AMENDMENT BILL**

 **Mr HARPER** (Thuringowa—ALP) (3.40 pm): I rise to speak in support of the Mental Health Amendment Bill 2016. The Palaszczuk government is committed to improving the mental health and wellbeing of all Queenslanders. We know that a significant body of work was completed last year by our government to deliver the Mental Health Act 2016. That bill was a huge undertaking by the government. The intent of the bill was to undertake the biggest change in mental health oversight in over a decade. I said then that mental health in Queensland is a very serious subject. It is imperative that politicians, practitioners and allied health staff from various agencies and communities support and advocate and put patient safety first and foremost. I believe it is our job as legislators to ensure there are safeguards around mental health policies and provisions. That is why I was very happy to be part of the Health and Ambulance Services Committee as it then was.

We have all worked hard and contributed in recent months to ensure that all bases are covered when it comes to the serious issue of mental health. In Queensland we know that an estimated 900,000 people have presented with some type of mental illness in their lifetime—one in four Queenslanders—and that is why it is imperative that we get the basics right. The Court Liaison Service Steering Committee identified that amendments were needed to parts of the Mental Health Act to get better clarity around legal issues arising from that act. As stated in the explanatory notes to the bill—

The Bill amends the Mental Health Act to clarify that oral or written statements made by a person:

- during an assessment regarding unsoundness of mind or fitness for trial are not admissible in evidence against the person in any criminal or civil proceeding; and
- during an examination conducted pursuant to a Magistrates Court's examination order are not admissible in evidence against the person in any criminal or civil proceeding.

The Mental Health Act is scheduled to commence on 5 March this year. Amongst other things, it provides a framework that allows a court to direct a person from the legal system toward the receipt of appropriate treatment and care if they have a mental illness or condition. That is a longstanding principle which has been in place for several decades with bipartisan support.

The objectives of this amendment bill are to provide a framework for people undergoing mental health assessments and mental health examinations without the risk of self-incrimination and to make clarifying and technical amendments to improve the intended operation of the act upon its commencement on 5 March 2017. The bill also clarifies amendments to the Public Health Act 2005 to ensure that provisions of the act operate as intended and makes consequential amendments to the Coroner's Act. In his introductory speech the health minister stated that amendments proposed in this bill will 'strengthen protections for people living with a mental illness who find themselves caught up in the legal system'. As further stated in the explanatory notes—

Following the enactment of the Mental Health Act, implementation work has been proceeding in a range of forums including the Court Liaison Service (CLS) Steering Committee.

The CLS was established to implement the bill. The committee is made up of representatives from the Queensland Magistrates Court, Queensland Mental Health Commission, Office of the Director of Public Prosecutions, Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Service, Queensland Law Society, Queensland Bar Association, Police Prosecutions and Public Guardian. The explanatory notes continue—

As part of the implementation work, the CLS steering committee has raised concerns about the admissibility of statements made during mental health assessments and examinations, and has recommended amendments to the Mental Health Act. These proposed amendments were formally supported in a letter from the Chief Magistrate to the Minister dated 1 September 2016.

All of the agencies that now make up the CLS steering committee had an opportunity to comment on the Draft Bill which was publicly released by the Government. However, none of these agencies raised these concerns prior to its enactment. The Government has agreed to act on the recommendation of the CLS steering committee and make the proposed amendments. The Government has agreed to this in line with the written advice from the Chief Magistrate on behalf of the members of the CLS steering committee.

The need to make this critical amendment has presented an opportunity to make other operational improvements to the Mental Health Act by way of clarifying and technical amendments. The amendments make clear that oral and written statements made by a person during an assessment will not be admissible in evidence against the person in any criminal or civil proceeding. If a Magistrates Court has dismissed a charge due to a finding of unsound mind or unfitness for trial or adjourned a hearing because the person is temporarily unfit for trial, the magistrate may make an examination order in relation to the person. The amendments make clear that oral and written statements made by the person during an examination conducted pursuant to the court's examination order are not admissible as evidence against the person's interests in relation to a finding of guilt. Examination reports may only be used to assist the Magistrates Court to decide whether to make another examination order.

I do support this bill. If it is passed it will ensure that the Mental Health Act operates as intended by making, clarifying and technical amendments which: support the operation of court processes, including by clarifying the Mental Health Court's ability to make a treatment support order for a person subject to an existing order and by clarifying the circumstances in which the suspension of a criminal proceeding ends; clarify the maximum time periods that a relevant patient may be kept in seclusion or have a mechanical restraint applied; enhance Mental Health Review Tribunal processes, including inserting a head of power to enable the Mental Health Review Tribunal to dismiss frivolous or vexatious appeals, confirming the confidential nature of certain processes and decisions and clarifying the periods within which certain matters must be reviewed; and provide that only those temporarily unfit persons who have not been found fit for trial and whose criminal proceedings have not been discontinued are prevented from applying to transfer interstate. I commend the bill to the House.