Speech By

Hon. Cameron Dick

MEMBER FOR WOODRIDGE

Record of Proceedings, 28 February 2017

MENTAL HEALTH AMENDMENT BILL

Second Reading

Hon. CR DICK (Woodridge—ALP) (Minister for Health and Minister for Ambulance Services) (2.40 pm): I move—

That the bill be now read a second time.

I would like to thank the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for its consideration of the bill and, in particular, acknowledge the member for Nudgee's leadership as the committee chair. I thank the government members who support the passage of the bill. I note the statement of reservations by opposition members of the committee.

As all honourable members know, the act will, for the first time, give the Magistrates Court the power to properly deal with people who are affected by mental illness who appear before them. This is a position that has been supported by both the government and the opposition through various iterations of the mental health bills presented in this House, including a bill introduced by the member for Southern Downs when he was minister for health. This is a significant change that will be supported by a revitalised Court Liaison Service, which will assist the Magistrates Court to assess mental health issues and for individuals to commence treatment where appropriate.

As with any major change, implementation issues will arise and the department has been working closely with the Chief Magistrate to prepare for these changes. The Chief Magistrate, working closely with other legal stakeholders, identified a particular concern whereby information provided to the Court Liaison Service for the purpose of assessment could be incriminating if the individual is subsequently deemed to be of sound mind. The Chief Magistrate raised the issue with me in his letter dated 1 September 2016, which I table.

Tabled paper: Letter, dated 1 September 2016, from the Chief Magistrate, Judge Orazio Rinaudo, to the Minister for Health and Minister for Ambulance Services, Hon. Cameron Dick, regarding proposed amendment to the Mental Health Act 2016 [291].

I would encourage all members to review this letter. We need the cooperation of the Chief Magistrate, the magistracy and the broader legal community if we are to make a success of the new Mental Health Act, which was supported by this House, and we should consider their submissions carefully.

This bill is an opportunity for all members of this House to give effect to the bipartisan will of this parliament and to ensure that we have a Court Liaison Service that is trusted by those who come before it and, as a consequence, is used. The real risk is if the substantive bill is not passed the Court Liaison Service may not be used or may be avoided altogether.

I turn now to the specific issues raised by opposition members in their statement of reservations. Opposition members expressed concern about the time frames to examine a person under an examination authority if the person was brought to a public sector health service facility, especially in regional and remote areas. The requirement for a person only to be detained for six hours with the

possibility of extension to 12 hours is, of course, a safeguard for the person. The same time periods apply for examination orders made by magistrates and emergency examination authorities made under the Public Health Act 2005.

The availability of suitable clinicians will not be an issue as a doctor or authorised mental health practitioner will be actioning the examination authority in the first place. An examination authority enables a doctor or authorised mental health practitioner to enter a place, such as a person's home, to examine a person without the person's consent. Police may assist in this process. Examination authorities are a last resort where there are serious concerns about a person's health and wellbeing and it has not been possible for the person to be examined with consent.

An authorised mental health service will be very much engaged in the process leading up to the making of an examination authority and in many cases will have made the application to the Mental Health Review Tribunal. As such, clinicians in the service will be involved in planning for the actioning of an examination authority. In many instances the examination will be completed straight away in the person's home. This may result in the person agreeing to voluntary treatment, a recommendation for assessment being made for the person or no further clinical action being taken. In some cases the doctor or authorised mental health practitioner may form the view that the examination of a person would be better undertaken in a public sector health service facility, for example, if the doctor or authorised mental health practitioner is unable to make a clinical decision at the time. The person will then be transported to a public sector health service facility. As a doctor or authorised mental health practitioner initiated the actioning of the examination authority in the first place, they will be available to make further examinations in the public sector health service facility.

The opposition also sought further information on the approach in other jurisdictions to the admissibility of reports by court liaison services. The approach to providing reports to magistrates varies greatly between jurisdictions. It is largely the case that court liaison services in other jurisdictions do not provide fit-for-trial and unsound mind reports. Their focus is on the provision of advice regarding immediate treatment needs and associated diversionary options. In some cases magistrates in other jurisdictions may request a psychiatric report on a case-by-case basis.

Queensland will be the only jurisdiction to have a comprehensive service for offering these reports for simple offences. So that full and frank discussions between an individual and a health practitioner can occur, it is important that individuals are confident that any self-incriminating statements made by them to a health practitioner cannot be used against them in criminal or civil proceedings. The enhanced role of the Court Liaison Service in undertaking mental health assessments for the purpose of assessing fitness for trial and unsoundness of mind is a new feature of the mental health legislative framework.

Further to my ministerial statement in the House this morning, I advise the House that I will be moving amendments during the consideration in detail of this bill to rectify issues arising from a former member of the Mental Health Review Tribunal being appointed as a lawyer member who was not fully qualified to serve in that role. These amendments have been circulated along with the explanatory notes. I am advised that the member was first appointed to the tribunal in 2002. The most recent appointment of the member occurred in 2014 by the Newman government. The member has not sat on the tribunal since August 2016. The specific issue is that, although the member was awarded a law degree in the mid 1990s, the member had not been admitted to practise as a lawyer by the Supreme Court of Queensland or equivalent. This falls short of the legal requirements established by the Mental Health Act, which requires that a lawyer member is a legal practitioner of at least five years standing. I am advised that, as a result, decisions made when the tribunal was constituted by that member may be subject to challenge.

It is important to point out that the member never made decisions on their own. They were always a member of a two- or three-member panel with other validly appointed members. There are approximately 95 members of the tribunal who sit sessionally as part of a panel. I am advised that the only way that we can ensure certainty is to introduce legislative amendments that retrospectively ensure the validity of those decisions.

Despite the member's lack of qualifications as prescribed by the act, members can be confident that there are a number of safeguards that have acted to protect the interests of the community and individuals. Firstly, the tribunal member never made a decision acting alone. Decisions made by the member were always with at least one other validly appointed member—usually two other persons. Secondly, around 98 per cent of decisions made by the member involved matters which were subsequently reviewed by a properly constituted tribunal or another responsible person under the act. Thirdly, analysis of those decisions by the Queensland Health Chief Psychiatrist shows the pattern of decisions in tribunals involving the member were consistent with decisions made by other members.

Fourthly, all decisions relevant to the treatment of an individual could be appealed to the Mental Health Court, which is made up of judges of the Supreme Court. Fifthly, the Attorney-General was represented at hearings in relation to forensic orders and could appeal decisions.

It is also important to understand the policy rationale that underlies the makeup of the tribunal. The tribunal is constituted of three types of members: psychiatrist member, legal member and community member. Those different types of members represent the different interests that should be considered in making decisions about involuntary treatment for individuals. The community interests should be considered through the community member: this would include concerns about safety. There should be appropriate clinical expertise through the psychiatrist member: this would include assessing the risk of poor outcomes if treatment is not continued. The rights of the individual should be considered principally through the legal member. In this instance, there has been a defect in the appointment of the legal member, so the interest that may not have been appropriately represented is that of the individual's rights. That is why the right of review is made principally to individuals subject to treatment, although in some cases it may involve others.

Lastly, as I have mentioned, we will establish a right of review with this amendment that will be available to victims in particular circumstances. That is because the right of review is available to persons subject to a decision. This will include applicants to the Mental Health Review Tribunal for forensic information orders. As members will be aware, the act provides for victims or another relevant person to apply to the Mental Health Review Tribunal to receive information about forensic patients. If a victim or other person was denied that forensic information order, they will also have access to a right of review under the amendment that I will be moving.

I wish to reiterate that important safeguards have applied, as I articulated earlier. The department has moved as quickly as possible to assess the impact and prepare a response to resolve the uncertainty surrounding this matter. I trust that the information I have put before the House will assist members in supporting the bill. I commend the bill to the House.