Speech By

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MEMBER FOR NUDGEE

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MENTAL HEALTH AMENDMENT BILL

Ms LINARD (Nudgee—ALP) (3.13 pm): I rise to speak in support of the Mental Health Amendment Bill 2016. As members are aware, the parliament last year passed the Mental Health Act 2016, which provides a regulatory framework for the respectful treatment of people who are unable to make decisions about their own treatment and care, and balances treatment needs with the needs of the community. The bill represented a modernising of the act and rectified a perceived deficiency in the previous mental health legal framework in Queensland by expressly enabling magistrates to discharge persons who appear to have been of unsound mind at the time of an alleged offence or who are unfit for trial. The act received royal assent on 4 March 2016 and is due to commence on 5 March 2017.

As the minister has outlined, since the bill was passed the Department of Health has been working closely with stakeholders in preparation for commencement of the new act, particularly in regard to the enhanced and broadened functions of the existing Court Liaison Service to support innovation in the Magistrates Court. During this process, the Chief Magistrate and other members of the Court Liaison Service Steering Committee, established to implement the act, identified an amendment that should be made before the new act commences to ensure that statements made by a defendant during mental health assessments and examinations are inadmissible in criminal and civil proceedings.

Under the act, to assist the court in determining the person's soundness of mind or fitness to stand trial, a mental health assessment may be conducted by the Court Liaison Service. If the court dismisses the charge or adjourns the hearing or otherwise believes it would benefit the person, the court may make an examination order. To make an examination order, the court must be satisfied the person has a mental illness or be unable to decide whether the person has a mental illness or another mental condition. An examination order allows the person to be temporarily detained for examination in a public sector health service facility or an authorised mental health service. A mental health examination is used to decide whether to make a treatment authority for the person, providing lawful authority to treat them if they lack the capacity to consent to treatment; make a recommendation for the person's treatment and care; or change the nature and extent of treatment and care provided to the person under an existing authority or order.

A mental health examination is intended to inform clinical decision-making about the person's mental health care and treatment, not to inform the court about criminal responsibility or fitness to stand trial. However, under section 180 of the act as it currently stands, the examination report, including details of the examination, would be admissible against the person in the criminal or civil proceeding for which the examination order was made and any future proceeding to which it is relevant. The valid concern raised is that, if this amendment is not made, defendants risk making statements during an assessment or examination that are admissible in criminal and civil proceedings against a defendant's interests in relation to findings of guilt. For this reason, they would likely be advised by their counsel not to engage in an assessment or examination, hence frustrating the Magistrates Court's ability to determine fitness for trial and soundness of mind. The proposed amendments seek to clarify this

situation under the law so that oral or written statements made by a defendant during an assessment regarding unsoundness of mind or fitness for trial are not admissible in evidence against the defendant in any criminal or civil proceeding.

The bill also makes clarifying and technical amendments to improve the intended operation of the act upon its commencement on 5 March and makes clarifying commitments to the Public Health Act 2005 and Coroners Act 2003 to ensure the provisions of both acts operate as intended.

The committee's task was to consider the policy to be given effect by the bill and whether the bill has sufficient regard to fundamental legislative principles in the Legislative Standards Act 1992. Submitters were broadly supportive of the proposed amendments. One potential FLP issue was raised in regard to clause 6, removing the requirement for a treatment authority to contain information about treatment. The committee found, however, that on balance the bill has sufficient regard to the rights and liberties of patients, their support network and legal representative in relation to access to information about a patient's treatment and care. In reaching this view the committee noted that an authorised doctor will be required to discuss the proposed treatment and care with the patient and nominated support person and that patients may request access to their health records, including details of their treatment and care, at any time.

After considering the submitted evidence, government members of the committee supported the passage of the bill. However, the committee was unable to reach a majority decision on whether the bill should be passed. Opposition members of the committee raised two questions which the minister has responded to in detail regarding time frames under the bill to examine a person under an examination authority and the approach taken in other jurisdictions to the admissibility of reports by court liaison services. In this regard, I note the minister's comments during his second reading speech that the requirement for a person only to be detained for six hours, with the possibility of extension to 12 hours, is a safeguard for the person and is consistent with the time period for examination orders made by magistrates and emergency examination authorities under the Public Health Act 2005; further, 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; and, in regard to the admissibility of reports, yes, Queensland will differ from other jurisdictions because Queensland will be the only jurisdiction to have a comprehensive service for offering these mental health assessment reports for simple offences.

The minister has advised the House that he will also be moving amendments during consideration in detail to rectify issues arising from a former member of the Mental Health Review Tribunal being appointed as a lawyer member who is not fully qualified to serve in that role. I note the minister's statement earlier today that the proposed amendments will have the effect of retrospectively validating affected decisions of the tribunal. Without this amendment, affected Queenslanders do not have certainty and clinicians who acted in good faith relying on the decisions of the tribunal may be at risk of legal action.

I thank the minister for acting so swiftly once these issues were identified to provide certainty to Queenslanders with mental illness, their families and their treating clinicians. I would like to thank those individuals and organisations who lodged written submissions and appeared at the committee's public hearing, and the Department of Health for its assistance with the committee's bill inquiry. It is imperative that we protect vulnerable Queenslanders living with a mental health condition, and the Palaszczuk government is committed to that end. I commend the bill to the House.