Speech By

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MEMBER FOR MIRANI

Record of Proceedings, 23 February 2022

HEALTH AND OTHER LEGISLATION AMENDMENT BILL

Mr ANDREW (Mirani—PHON) (4.24 pm): I rise to speak on the Health and Other Legislation Amendment Bill 2021. I wish to address some of the aspects of the bill that make changes to the Mental Health Act 2016, the MHA, particularly in relation to the treatment of people judged to have an impaired decision-making ability. The Queensland Human Rights Commissioner said in his submission on the bill—

Involuntary patient admission is a significant limitation on the rights to liberty and security, freedom of movement, and privacy, family, and home.

What the commissioner's submission makes clear is that people who are made the subject of an involuntary order hold fewer rights than any other group within the population, including our prisoners. This raises an important point that many people may not be aware of. The vast majority of people subject to involuntary orders in Queensland are people who have committed no crime, have no criminal record and are completely unconnected with the criminal justice system.

It is important to keep this in mind when looking after their treatment within the Queensland health system, especially when it comes to the current practice of carrying out electroconvulsive therapy, ECT—shock treatment—on such people without their fully informed consent. I acknowledge that the bill seeks to address this issue by adding a proviso requiring a person's views, wishes and preferences to be taken into account before the approval of ECT treatment is given. However, the wording of this provision is so vague that it offers no real safeguard or protection for such a vulnerable group. A proper and enforceable safeguard is definitely needed when it comes to a procedure which is as highly controversial as electroconvulsive therapy, ECT—shock treatment, in old terms.

During the procedure the patient is sedated and electrodes are attached to their head through which an electric current sends pulses through their brain. The treatment causes seizures in the hope that they will somehow alter the brain's chemical make-up. These brain seizures can last up to a minute each time as the shock is administered.

According to a 2008 UN resolution on torture and degrading treatments or punishment of persons with disabilities, the practice of ECT may constitute torture or illegal treatment. The resolution also states that it is of vital importance that ECT be administered only with the free and informed consent of the person concerned, and this consent must include detailed information on its risks, which include heart complications, brain damage, memory loss and, in extreme cases, death. Many medical experts have condemned the use of ECT treatment, particularly on young adults and children, due to its known risks and side effects.

A close relative of mine underwent ECT treatment in Queensland some years back. I witnessed firsthand many of the adverse effects he suffered as a consequence, some of which he has never fully recovered from. That is why I feel very strongly that under no circumstances should shock treatments be used on a child.

Currently, the Mental Health Review Tribunal can approve the use of ECT for minors without their consent. Ironically, under clause 22 of the bill a child is said to have the capacity to consent when it comes to disclosing information if they are of sufficient age and mental and emotional maturity to understand the nature of consenting to the disclosure of confidential information. Elsewhere in bill, clause 63(b) states that the performance of electroconvulsive therapy may be carried out on a minor if the tribunal has approved its use under section 509. There is no opportunity given to minors to demonstrate the same capacity for consent given to minors elsewhere in the bill.

This means that under the act a child of 11 may be judged to have capacity for consent for the purpose of disclosing information, while simultaneously allowing a young adult up to the age of 18 no rights whatsoever to withhold their consent to a highly invasive and potentially dangerous medical procedure. I do not see much logic there. It is a contradiction that appears throughout Queensland health legislation and it needs to be addressed.

Other provisions in the bill are aimed at expanding greatly the number of people and groups who are given access to the Viewer. The Viewer displays a comprehensive view of a patient's clinical and demographic information collected as a result of all of their interactions with Queensland Health. This information can include radiology and pathology results, pregnancy terminations, emergency department discharge summaries, medications and alerts, outpatient appointments, as well as instructions regarding patient treatment.

Originally, access to the Viewer was restricted to prescribed health practitioners; namely, GPs. In February 2020 this was widened to include a whole range of other health practitioners including midwives, nurses and paramedics. In September 2020 allied health practitioners registered under the national law were added to this list. Now in this bill the term 'health practitioner' is being discarded in favour of a vast array of health professionals who are not registered under national law.

This wholesale sharing of a patient's health information with so-called allied health professionals across the non-government and private sector raises huge privacy and security concerns around the danger of misuse and unauthorised access. As the Information Commissioner pointed out in her submission, community concerns over privacy and the third-party use of people's data has the potential to 'undermine community trust and confidence' in the whole system.

A patient's medical record may contain social or other information that a patient may not necessarily know is contained in their medical record and accessible by a broad range of health professionals. This may include highly sensitive information such as mental health history, sexual health information or history of substance abuse. As the Information Commissioner wrote in her submission—

> … is it reasonable and necessary for an audiologist to have access to mental health information, sexual health history or Advance Care Planning information about a patient for the purposes of providing audiology services?

Section 25 of the HR Act protects a person from arbitrary or unlawful interference with their privacy. This wholesale collection, use and disclosure of people's private information by the government therefore has the potential to limit this right, if not abolish it altogether.

I am against the unwarranted expansion of the third-party access to people's sensitive medical information without their express knowledge or consent. A lot of information contained in those records could lead to discrimination and stigma when it comes to the quality of health service a patient is given.

The bill should at least be amended to make it mandatory for a person to whom the information belongs to be made aware of whom their private information is being accessed by and why. I also agree with the Information Commissioner's recommendations that only health professionals specifically covered by the Australian Privacy Principles should be allowed access.

They should also be working in the health service within the scope of authority of the Health Ombudsman, who can then handle any complaints or breaches of privacy against registered and unregistered health service providers. I also agree with the commissioner's comments that the existing process of 'opt-in' for Queensland Health patients is a much stronger consent model than 'opt-out'. It ensures that the patient's consent is 'informed, voluntary, current and specific'.

By way of contrast, the bill amends the Ambulance Service Act 1991 to set stricter limits on its own confidential information being disclosed and under what conditions. The bill also expands the definition of 'confidential information' and increases the maximum penalties for disclosure from 50 to 100 penalty units. All of this reminds me of our former governor-general Sir Zelman Cowan's statement that the hypocrisy of an authoritarian government is that it claims privacy for its own doings and allows none for its citizens.

The case for secrecy in any democracy is rarely justified, and increasingly we are seeing the principle of confidentiality used to shield the government from all criticism, especially in relation to controversial information they are worried public officials may disclose. Government ministers need to remember that the integrity of the Queensland health system is not just a matter for the government or even their health officials; it is a matter for the Queensland people.