

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to provide for a trial, in a prescribed area, of the involuntary treatment of persons with a severe substance dependence with the aim of protecting their health and safety, facilitating their stabilisation through medical treatment and giving them the opportunity to engage in voluntary treatment.

The Bill replaces the application of the Inebriates Act 1912 in the area to be prescribed by regulation, and is generally in accordance with proposals arising from a review of that Act set out in the Legislative Council Standing Committee on Social Issues' Report on the Inebriates Act 1912.

The Bill is divided into Parts, each Part dealing with a discrete subject-matter relating to the treatment and care of dependent persons.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 provides that the proposed Act only applies to individuals over 18 in an area to be prescribed by the regulations.

Clause 5 defines certain words and expressions used in the proposed Act.

Part 2 Involuntary detention and treatment

Clause 6 provides that a person must not be detained in a treatment centre unless an accredited medical practitioner has issued a dependency certificate in relation to the person.

Clause 7 provides for the appointment of accredited medical practitioners.

Clause 8 provides for premises to be declared treatment centres under the proposed Act.

Clause 9 provides for the assessment of a person by an accredited medical practitioner and the issue of a dependency certificate if the practitioner is satisfied the criteria stated in the clause applies to the person.

Clause 10 provides that if an accredited medical practitioner is unable to access a person to conduct an assessment, a Magistrate or authorised officer may authorise the practitioner to visit and assess the person to decide whether or not a dependency certificate should be issued.

The authorisation may only be given if the Magistrate or officer is satisfied of the criteria stated in this clause.

The practitioner and any other person authorised may enter premises, by force if need be, to carry out the assessment.

Clause 11 provides that the accredited medical practitioner must arrange for an interpreter to be present at the assessment if the person to be assessed is unable to communicate adequately in English but can communicate adequately in another language.

Clause 12 provides that if the accredited medical practitioner is not satisfied a dependency certificate should be issued in relation to the person, the practitioner must, if the practitioner considers it appropriate, give advice on alternative options available for treating the person.

Clause 13 enables the dependent person to nominate another person to be the dependent person's primary carer. The dependent person may revoke or vary the nomination at any time.

An accredited medical practitioner must, in carrying out his or her functions under the proposed Act or the regulations, normally give effect to the nomination.

However, this does not apply if the practitioner reasonably believes that to do so may

put the dependent person or any other person at risk of serious harm.

Clause 14 provides that a person for whom a dependency certificate has been issued must not be detained for treatment for more than 28 days from the day the certificate is issued, and as soon as practicable after the certificate is issued, the person must be brought before a Magistrate for a review of the issuing of the certificate.

Clause 15 provides that any person administering any medication to a dependent person must have due regard to the possible effects of the administration of the medication, and must prescribe the minimum medication, consistent with proper care, to ensure that the dependent person is not prevented from communicating adequately with any person engaged to represent the dependent person at a review under proposed Part 4.

Clause 16 provides that an accredited medical practitioner must, as soon as practicable after the dependency certificate is issued, give the dependent person an oral explanation and a written statement of the person's legal rights and other entitlements under the proposed Act.

The accredited medical practitioner must, if the dependent person is unable to communicate adequately in English but is able to communicate adequately in another language, arrange for the oral explanation to be given in the other language.

Clause 17 provides that an accredited medical practitioner must, not later than 24 hours after the dependency certificate has been issued, take all reasonably practicable steps to notify the primary carer of the dependent person that the person has been detained.

Clause 18 provides that an accredited medical practitioner must, as soon as practicable after the dependency certificate is issued, give the dependent person a statement of the rights of appeal conferred on the person under the proposed Act.

Clause 19 provides that an accredited medical practitioner must take all reasonably practicable steps to notify the primary carer if the dependent person is absent from a treatment centre without permission, fails to return at the end of a period of leave, is discharged from a treatment centre or an application is made to extend the effective period of a dependency certificate relating to the person.

If the person is referred to or discharged to another centre the accredited medical practitioner must also state in the notice the name of that centre.

Clause 20 provides that a transport officer may take a dependent person to or from a treatment centre and use reasonable force in exercising functions under this clause or any other provision of the proposed Act applying this clause, and restrain the dependent person in any way that is reasonably necessary in the circumstances.

The officer may also carry out a search of the person, if the officer reasonably suspects that the person is carrying anything that would present a danger to the officer, the person or any other person, or that could be used to assist the person to escape from the officer's custody.

Clause 21 provides that an accredited medical practitioner may permit a dependent person, in certain circumstances, to be absent from a treatment centre for the period, and on the conditions, the practitioner thinks fit.

Permission may be given on any grounds the practitioner thinks fit, including, for example, compassionate grounds or that the dependent person requires medical treatment.

Clause 22 enables an accredited medical practitioner to apprehend a dependent person, or direct that the person be apprehended, if the person fails to return to a treatment centre on or before the expiry of a permitted period of absence, fails to comply with a condition of the permission or absents himself or herself from the centre otherwise than in accordance with the proposed Act.

Clause 23 enables an accredited medical practitioner to request a police officer to apprehend, or assist in apprehending, a dependent person if the practitioner is of the opinion that there are serious concerns relating to the safety of the person or other

persons if the person is taken to a treatment centre without the assistance of a police officer.

The police officer may enter premises to apprehend the dependent person, may apprehend the person without a warrant and may exercise any powers conferred on a transport officer under the proposed Act.

Clause 24 enables an accredited medical practitioner to discharge a dependent person from a treatment centre at any time if the practitioner is satisfied the person's continued presence at the treatment centre will not achieve the purpose for which the person was detained.

Clause 25 provides that an accredited medical practitioner must take all reasonably practicable steps to ensure that the dependent person, and the primary carer of the person, are consulted in relation to planning the person's discharge and any later treatment or other action considered in relation to the person and the accredited medical practitioner must also take all reasonably practicable steps to provide the person, and the person's primary carer, with appropriate information about follow-up care.

Part 3 Official visitors

Clause 26 enables the Minister to appoint a person to be the principal official visitor to oversee the official visitor program conducted under the proposed Act, to refer matters relating to any significant alcohol or drug dependency issues or dependent person safety or treatment issues to the Minister and to act as an advocate to the Minister for persons receiving alcohol or drug dependency treatment.

Clause 27 provides that the Minister must appoint appropriate people to be official visitors under the proposed Act. An official visitor may refer matters relating to any significant alcohol or drug dependency issues or patient safety or treatment issues to the principal official visitor or any other appropriate person or body, may act as an advocate for patients about issues arising in the alcohol or drug dependency treatment system and may inspect alcohol or drug dependency treatment centres.

Clause 28 provides for matters relating to principal official visitors and official visitors in Schedule 3 to the proposed Act to have effect.

Clause 29 provides that the principal official visitor must ensure that 2 or more official visitors visit each treatment centre.

When visiting a treatment centre, the official visitors must inspect every part of the centre at least once, make any necessary inquiries about the treatment and detention of dependent persons in the centre, examine and sign the registers, books, records and other documents produced to them in accordance with the proposed Act, and enter the fact of their visit in the official visitors book at the centre, together with any observations they think appropriate to make.

A visit may be made with or without previous notice and at any time of the day or night, and be of such length, as the official visitors think appropriate and a visit may be made at the request of the primary carer of a dependent person being treated at the centre.

Clause 30 provides that the director of each treatment centre must allow official visitors to have access to every part of the centre, permit the official visitors to see and interview each dependent person, give full and true answers to the best of his or her knowledge to all questions the official visitors ask in relation to the centre and the dependent persons and produce to the official visitors any registers, books, records and other documents relating to dependent persons and their discharge.

Clause 31 provides that an official visitor may report to the Minister about any matter arising from the exercise by the official visitor of his or her functions.

Clause 32 enables a dependent person, or the primary carer of the person, to notify an accredited medical practitioner that the person or carer wants to see an official visitor.

The accredited medical practitioner must tell an official visitor about the request not later than 2 days after receiving the notice.

Clause 33 provides that anything done or omitted to be done by an official visitor does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing the proposed Act or the regulations, subject the official visitor personally to any action, liability, claim or demand.

Part 4 Review and extension of dependency certificates

Clause 34 provides that a Magistrate must hold an inquiry about the issuing of each dependency certificate to determine whether or not, on the balance of probabilities, the dependent person meets the criteria for detention.

If the Magistrate is satisfied, on the balance of probabilities, that the person meets the criteria for detention, the Magistrate may confirm the issuing of the dependency certificate, or confirm the issuing of the dependency certificate, but for a shorter period.

If the Magistrate is not satisfied, on the balance of probabilities, that the person meets the criteria for detention, the Magistrate must order that the person be discharged.

Clause 35 enables an accredited medical practitioner to apply to a Magistrate to extend the effective period of a dependency certificate if the practitioner is satisfied that the dependent person is suffering from drug or alcohol related brain injury and that additional time is needed to carry out treatment and to plan the person's discharge.

Clause 36 provides that the Magistrate must determine whether or not the detention and treatment period should be extended and if so for how long, but for not more than 3 months from the day the dependency certificate was issued.

Clause 37 provides that the review or the consideration of an application must be conducted quickly and with as little formality and technicality as the requirements of the proposed Act, the regulations and as the proper consideration of the matters before the Magistrate permit.

In the proceedings, the Magistrate is not bound by the rules of evidence but may inform himself or herself of any matter in the way the Magistrate thinks appropriate and as the proper consideration of the matter before the Magistrate permits.

The proceedings are generally open to the public but the Magistrate may order the proceedings be conducted wholly or partly in private or prohibit or restrict the publication or broadcasting of certain matters.

If the dependent person is unable to communicate adequately in English but is able to communicate adequately in another language the dependent person may be assisted in the proceedings by a competent interpreter.

The dependent person must be represented in the proceedings by an Australian legal practitioner or, with the leave of the Magistrate, another person chosen by the dependent person, unless the dependent person states that he or she does not wish to be represented.

Clause 38 permits the Magistrate to adjourn the proceedings for up to 7 days.

Clause 39 permits the Magistrate to issue a summons requiring a person to attend as a witness in the proceedings or to attend the proceedings and to produce any documents in the possession or under the control of the person relating to the proceedings and specified in the summons.

Clause 40 provides that unless the Magistrate otherwise determines, the dependent person, or a representative of the dependent person, is entitled to inspect, or otherwise have access to, any medical records relating to the dependent person in the possession of another person.

An accredited medical practitioner may warn the representative of the dependent person that it may be harmful to communicate to the dependent person, or any other person, specified information in those medical records.

Clause 41 provides that a person must not, whether before or after the proceedings are completed and without the consent of the Magistrate, publish or broadcast the

name of any person to whom the proceedings relate, who appears as a witness in the proceedings or who is mentioned or otherwise involved in the proceedings. This does not prohibit the publication or broadcasting of an official report of the proceedings that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this clause.

Clause 42 provides that the proceedings must be recorded and regulations may be made about the way in which the evidence may be recorded and the circumstances when the evidence must be transcribed.

Clause 43 provides that subject to the proposed Act and the regulations, the procedure for the proceedings, and for the conduct of the proceedings, is to be determined by the Magistrate.

Clause 44 provides that a person must not refuse, neglect or for any reason fail to obey or comply with an order or determination of the Magistrate under the proposed Act.

Clause 45 provides that if a person is aggrieved by an order or determination of the Magistrate they can appeal to the Administrative Decisions Tribunal against the order or determination.

Part 5 Miscellaneous

Clause 46 places restrictions on a person holding certain offices at the same time.

Clause 47 provides that a person must not disclose any information obtained in connection with the administration or execution of the proposed Act or regulations except in certain circumstances.

Clause 48 provides that the proposed Act will not limit or affect any power conferred on a police officer or any other person by or under any other law with respect to stopping, searching or detaining a person (whether or not a dependent person) or taking any such person to any place.

Also, nothing in the proposed Act prevents an accredited medical practitioner from taking any action the practitioner thinks fit to protect a dependent person detained in a treatment centre, or any other person in the treatment centre, from serious physical harm.

Clause 49 provides that any member of staff of the NSW Health Service, health care professional or police officer who, in good faith, exercises a function that is conferred or imposed on that person by or under the proposed Act is not personally liable for any injury or damage caused by the exercise of that function.

However, this does not relieve a medical practitioner or other person from liability the practitioner or other person would have been subject to had the treatment been carried out with the person's consent.

Clause 50 states how documents may be served under the proposed Act.

Clause 51 enables the Director-General to approve forms (other than prescribed forms required by the proposed Act) for the administration of the proposed Act.

Clause 52 provides that clause 3 of the proposed Act is intended to give guidance in the administration of the proposed Act and does not create, or confer on any person, any right or entitlement enforceable at law.

Clause 53 provides that proceedings for offences under the proposed Act or regulations may be dealt with summarily before a Local Court.

Clause 54 enables the Governor to amend proposed Schedule 1 by inserting, altering or omitting the name of a substance.

Clause 55 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 56 is a formal provision that gives effect to amendments of the Inebriates Act 1912 in Schedule 4 to the proposed Act.

Clause 57 provides for a review of the proposed Act as soon as possible after its commencement and a report on the outcome of the review must be tabled in each House of Parliament within 2 years of the commencement.

Schedule 1 Substances

Schedule 1 contains the list of substances for which there is concern about severe substance dependence.

Schedule 2 Dependency certificate

Schedule 2 contains the form of a dependency certificate issued for the involuntary detention and treatment of a dependent person in a treatment centre.

Schedule 3 Provisions relating to principal official visitor and official visitors

Schedule 3 contains provisions about the remuneration and tenure of office of the principal official visitor and official visitors.

Schedule 4 Amendment of Inebriates Act 1912 No 24

Schedule 4 makes amendments to the Inebriates Act 1912.