

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

(a) to amend the *Mental Health Act 2007* with respect to the review of involuntary patients, the classification of involuntary patients as voluntary patients, the making of community treatment orders with respect to forensic patients, the service of notices on persons who breach community treatment orders, the circumstances in which electro convulsive therapy may be used and the composition of the Mental Health Review Tribunal,

(b) to amend the *Mental Health (Forensic Provisions) Act 1990* with respect to the making of community treatment orders in relation to forensic patients,

(c) to amend the *Health Records and Information Privacy Act 2002* to provide that a healthcare identifier within the meaning of the *Healthcare Identifiers Act 2010* of the Commonwealth is health information and to permit regulations to be made with respect to healthcare identifiers.

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Outline of provisions

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Mental Health Act 2007

No 8

Schedule 1 [1] permits the Mental Health Review Tribunal (*the Tribunal*) to review the case of an involuntary patient at any time. It also requires an authorised medical officer to cause an involuntary patient to be brought before the Tribunal at such times as may be required by the Tribunal for the purposes of any such review.

Schedule 1 [2] permits the Tribunal to classify an involuntary patient as a voluntary patient when conducting a review of the patient. **Schedule 1 [3]** makes a consequential amendment.

Schedule 1 [4] provides that the Tribunal, when determining whether to make a community treatment order in respect of a forensic patient, is not required to consider if the person has a previous history of refusing to accept appropriate treatment. Instead, it must be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted.

Schedule 1 [5] clarifies the steps that must be taken when notifying a person that he or she is in breach of a community treatment order and provides for notification to be given by post in circumstances where it is not reasonably practicable to hand the notice directly to the person. **Schedule 1 [9]** includes a transitional provision that enables the proposed notification requirements to be used in respect of a breach of a community treatment order that occurs before the proposed amendment commences.

Schedule 1 [6] corrects a typographical error in the formulation of a test to be applied by the Tribunal in making an electro convulsive therapy determination so that it is consistent with the formulation of the test in related provisions of the *Mental Health Act 2007* and in the corresponding provisions of the former *Mental Health Act 1990*.

Schedule 1 [7] removes a prohibition on the President of the Tribunal, when constituting the Tribunal, nominating members (other than psychiatrists) who are Australian lawyers. The President may now nominate a member whom the Governor considers to have suitable qualifications or experience.

Schedule 1 [8] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

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Schedule 2 Amendment of Mental Health (Forensic Provisions) Act 1990 No 10

Schedule 2 [1] provides that the Tribunal may make community treatment orders in relation to all forensic patients rather than certain classes of forensic patients as is the case at present.

Schedule 2 [2] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Health Records and Information Privacy Act 2002 No 71

Schedule 3 [1] and [2] provide that a healthcare identifier within the meaning of the *Healthcare Identifiers Act 2010* of the Commonwealth is health information for the purposes of the *Health Records and Information Privacy Act 2002*.

Schedule 3 [3] provides that regulations may be made in relation to healthcare identifiers and may specify the circumstances in which a person may or may not use or disclose a healthcare identifier. A person who uses or discloses a healthcare identifier in contravention of any such regulation commits an offence (maximum penalty \$66,000 in the case of a corporation, or imprisonment for 2 years or \$13,200, or both, in any other case).

Schedule 3 [4] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.