MENTAL HEALTH COMMISSION BILL 2011

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Bill introduced on motion by Mr Kevin Humphries

Agreement in Principle

Mr KEVIN HUMPHRIES (Barwon—Minister for Mental Health, Minister for Healthy Lifestyles, and Minister for Western New South Wales) [11.08 a.m.]: I move:

That this bill be now agreed to in principle.

In March this year the New South Wales Liberal-Nationals were elected to government with a powerful mandate from the community to reform the mental health system in New South Wales. At the centre of this commitment was our pledge to establish a Mental Health Commission to drive a more accountable and efficient mental health system and, most importantly, to enhance the wellbeing and mental health of the people of this State. I believe this will be one of the most important mental health reforms in the history of New South Wales. Today I am proud to bring before the House the Mental Health Commission Bill 2011, which clearly delivers on our commitment to establish an independent Mental Health Commission that will be a champion for mental health, ensure better accountability of mental health services and the use of mental health funds, and nurture innovation in our approach to mental health.

The bill sets out the internal structures, principles, functions and powers that will govern the work of the Mental Health Commission. It also sets out responsibilities that will apply to the range of government agencies providing services that people with mental illness, their families and carers want to use. Quite simply, the bill makes the Mental Health Commission an integral part of enhancing mental health outcomes in this State, which is a key long-term priority for the Government as we implement out 10-year NSW 2021 policy. Before speaking to the provisions of the bill I should like to report to the House on how it was developed. I believe the process undertaken sets the standard for how government, key stakeholders and the community can work together to achieve a shared goal.

Shortly after our election the Government set up the Taskforce to Establish a Mental Health Commission in NSW. The task force comprised 12 experts and people highly respected in their particular fields. I was proud to co-chair that task force, which was one of the Government's key 100 Day Action Plan commitments. We have delivered. Members dedicated their time, energy and expertise to support this important reform process. I am pleased to have many of them present in the public gallery today. The task force was charged with consulting, researching and advising on what should be in legislation to establish a Mental Health Commission to respond to the specific mental health needs of New South Wales.

The bill is, first, the culmination of an extensive consultation process. The task force consulted widely and directly with people with mental illness, families, carers, clinicians, service providers, government agencies, the non-government sector and the general community. Importantly, it ensured that people in regional centres in the north, south and west of New South Wales as well as in metropolitan Sydney were able to participate in and contribute to these consultations. In addition to hosting forums in the important regional centres of Dubbo, Wagga Wagga, Nowra and Coffs Harbour, as well as in Sydney and Penrith, the task force hosted an online survey so that it could hear from people beyond those centres and ensure an even wider reach into the community. Crucially, people affected by mental illness have been actively and intrinsically involved in the discussions.

The NSW Consumer Advisory Group—Mental Health Inc., and the Association of Relatives and Friends of the Mentally Ill accessed their networks of over 1,000 consumers and carers through face-to-face meetings and an online survey to provide specific, focused advice to the task force. Experts from outside the task force also contributed through specialist working groups involving representatives of people with mental illness, carers, service providers, senior members of the legal profession, academics and health professionals. Direct consultations were also held with mental health commissions in Canada, New Zealand, California and Western Australia. I am proud to report that more than 2,000 people were involved in the consultations and development of the bill since the task force started its work in May this year.

The views of community members, stakeholders and other experts have been essential to ensure that as many issues and concerns as possible of relevance to the commission's establishment were identified and considered. The expertise and experience fed back through these consultations was front and centre in informing the task force recommendations and the development of the bill. We heard most how important it would be to ensure that the commission was appropriately independent and had the right functions and powers to drive and maintain mental health reform.

We heard also that the community wants a commission that takes a holistic approach to addressing the needs of people with mental illness across government and whole of life; has a broad scope in that it deals not only with mental health issues but also with a range of related diseases and disorders; focuses on systemic issues rather than duplicate the functions of existing entities that respond to individual cases or complaints; has a strategic capacity and leadership role with the ability to make recommendations about having a more integrated service system; has the ability to drive service quality improvement as well as report on performance; would be an authentic champion, maintaining strong ongoing connections with people touched by mental illness and other key stakeholders; and can educate us all about mental illness with the aim of stopping the stigma and, quite frankly, the discrimination that people affected by mental illness often experience.

I am proud that these matters are reflected in the bill. I shall take the House through some of the key provisions of the bill in more detail. Part 1 sets out the name, commencement

arrangements and definitions. Importantly, it also describes in clause 3 the object of the legislation, which is to establish a Mental Health Commission to improve the mental health system and the mental health and wellbeing of people in New South Wales. By delivering on this express objective, the commission will make a real difference to the lives of people with mental illness in our community as a whole. Part 2 constitutes the commission itself and enables the Governor to appoint a commissioner and deputy commissioners.

Importantly, clause 8 provides that the commissioner, or at least one of the deputy commissioners, must have or have had a mental illness. This was a consistent message from the consultations. It means that the commission's work will be informed by the direct and personal experience of mental illness of one of its senior officials. For the commission to make an authentic difference, it must be able to understand what it really means to have a mental illness and try to get help. Clause 8 is one way to ensure that the commission has this insight.

One issue of debate in the consultations was the sort of independence that would best enable the commission to be effective in reforming the mental health system in this State. Of course, there were a range of views on this issue. It came down to the simple fact that the commission could be more influential and have greater capacity to work with service providers if it operated from within a government framework. This is what the task force recommended and it was supported by the Government. Under clause 9 the commission's place is clearly set within government and specifically within the Minister's direction and control. However, the commission is not subject to the Minister's direction and control in developing the draft strategic plan or any other report prepared by the commission. Clearly therefore, the commission will be able to give independent, frank and fearless advice and recommendations to the Government on the mental health system and systemic issues affecting people who have a mental illness.

Part 2 also deals with the commission's consultative structures. The community told us that the commission must have an advisory committee that is representative of as many relevant interests as possible. Clause 10 is a direct response to this message. It enables the community advisory council to advise the commission on mental health issues. Clause 10 also requires the council to represent the diversity of the New South Wales community, including members representing people with mental illness, their families and carers, service providers, people from regional and remote New South Wales, people from culturally and linguistically diverse groups, and Aboriginal people. I point out at this time that the commission will be able to set up other consultative mechanisms as a means of building a bipartisan and broadly representative approach to mental health in the years to come.

Related to this, clause 12 (2) provides that in exercising its functions the commission will engage and consult with people who have a mental illness, their family and carers, the government and non-government sectors, and the wider community. While the consultative mechanisms themselves do not need to be included in the bill, I shall speak about them at this point because they were forcefully recommended in the consultations and by the task force.

The commission will be able to establish working groups from time to time to ensure that it has access to a wide range of expertise and evidence in the performance of its functions, and that it considers the views of relevant stakeholders. Members of the working groups will be able to be drawn from the community, key stakeholders and other experts depending on the issue with which they will be tasked. The commission will also be able to conduct regular direct regional and community consultations to maintain those important connections with the community. This will help to ensure that the commission remains contemporary and relevant, as well as being fully informed of community priorities and the latest thinking about mental health.

Part 3 sets out the principles and functions of the commission. Clause 11 sets out five key principles that are to govern the work of the commission and public sector agencies in providing services and support for people with mental illness. It is important to highlight these principles today, given their importance in underpinning the mental health reform that is to come. They are that people who have a mental illness, wherever they live, should have access to the best possible mental health care and support. They should also be treated with respect and dignity as should their families and carers. It is of the utmost importance that mental health systems have a philosophy of recovery as is understood in the mental health sector. This means that people with mental illness move past their illness to make decisions about their lives and to lead meaningful lives in the community. By this I mean having access to jobs, education, a home and those normal expectations that we all have.

It is also critical that we recognise that promoting good mental health and having an effective service system is a shared responsibility across all levels of government and with the non-government sector. Quite simply, the commission will not be able to do it alone. It will need to work with other sectors and entities that provide mental health services such as the Commonwealth's National Mental Health Commission and Medicare locals as well as private practitioners. It is only by doing this that we can build a better coordinated and integrated service system that is easier for individuals to access and navigate the range of services they need. These principles will govern the work of the commission.

I turn now to the remainder of clause 12, which sets out the commission's functions. These are all in line with recommendations made during the consultations and by the task force. First, the commission will be tasked to prepare for the Government's consideration a draft strategic plan for the mental health system in New South Wales. By this I mean not just the health system but the full range of services and supports provided across government, including housing, education and those in the criminal justice system. Consistent with the new spirit of cooperation and collaboration that the Government wants to instil in mental health, the commission will develop the plan in genuine consultation with government agencies and service providers. Of course it will also draw on evidence of the experience of care had by people with mental illness, carers and families.

At this point I would like to dispel two possible concerns about the potential of the strategic plan to drive genuine reform. It has been said that a commission will be able to have an

impact only if it controls the Mental Health budget. From the models of mental health commissions that the task force examined, one mental health commission does hold the budget, others do not. After careful consideration it was the view of the task force that the most effective commission for New South Wales would be one that does not hold the budget. This commission is being established to deliver strategic direction for Mental Health in this State, to ensure that services are appropriately designed and targeted, and to review, monitor and report to the Government, the Parliament and the public on how those funds are being used. We are not seeking to create another government department with all the trappings of detailed budget management.

It is important that the commission is able to influence decisions about where the Mental Health budget goes and for what purpose, to report to the public on how well its recommendations are being translated into real reform and that it is distanced enough from the day-to-day running of services to manage this. Through the strategic plan and the fact that the strategy for the mental health system across government will be finalised and endorsed by government, we will be able to consider the appropriateness of the plan as a whole of government approach, including its costs and benefits, to inform the budget allocation for Mental Health. There is broad support for this approach demonstrated through the consultations and confidence that it would provide a transparent and accountable framework for making sure mental health funds are spent on mental health. Of course, there will continue to be different views on this. For the majority of those consulted the most important thing is to avoid the commission being distracted from its reform agenda by being too directly involved in the detailed business of purchasing and giving services. We need to ensure that the strategic plan does not become an undisciplined framework for reform with unrealistic aspirations.

Before the plan is implemented it will be considered and agreed by government. In this way the Government and community can be assured that the plan is in line with reform directions, feasible and fiscally sustainable. We want real and lasting change based on an informed, planned approach. As part of its responsibility to improve the mental health and wellbeing of people affected by mental illness, the first part of clause 12 sets out a number of other important functions, including to monitor and report on the implementation of the strategic plan; review and evaluate mental health services and programs and other issues affecting people with a mental illness; advise on how they could be improved; commission research; be a vehicle for the exchange of knowledge and ideas, working closely with clinicians and other experts to drive innovation and service improvements; and ensure the service system is heading in the right direction by promoting strategies for good health as well as prevention and early intervention.

We all know that early responses to mental health problems lead to better outcomes later in life. It will educate the community about mental health issues and raise awareness about mental illness, including a focus on removing the stigma and reducing discrimination. These functions reflect what the community and experts told us are important to ensure that the commission is able to deliver. Clause 12 also enables other functions for the commission to

be prescribed by regulation if required. This will ensure the relevance and sustainability of the commission in years to come if the need for new responses to mental illness arises.

In response to the consultations the second part of clause 12 sets out how the commission should exercise its functions, including that it must look at the mental health system as a whole and focus on systemic mental health issues and not duplicate the work of other entities in dealing with individual cases; make consultation a fundamental component of the way it does its business; take into account when a person with mental illness has further coexisting conditions or issues, including homelessness, addiction to drugs or alcohol, or intellectual disability; and consider what happens when a person with mental illness comes into contact with the criminal justice system.

The Government has made it clear in our original commitment to the commission, and also in NSW 2021, that we want to ensure that more adults and adolescents are diverted from the criminal justice system into treatment. Underpinning the central role that the commission will have in supporting the Government's reform agenda for mental health, the Minister will have powers under clause 13 to direct the commission to do a special report on a significant systemic issue. It is anticipated this power will be used when there are serious across-portfolio implications and the report would form the process of resolution through the Cabinet process. This shows that the commission will have a clear capacity to effect change by being part of, and influential in, the central process of government. The commission will have broad powers under clause 14 to undertake a review and report on a systemic mental health issue at its own initiative. The commission's report on performance on the strategic plan will also be made public under clause 14, which again delivers on our commitment to transparent accountability in the delivery of mental health services.

As I said before, our new mental health system will be based on cooperation and collaboration. In New Zealand they have adopted a principle of walking together. We want to emulate that. Part 4, clause 16, sets down requirements for cooperation between the commission and those government agencies that provide mental health and support services. Noting the importance of the commission being able to access the data and other information it needs to do its work, under clause 16 the commission will be able to request that a public sector agency provide it with the information necessary for the exercise of the commission's functions. For those with concerns about privacy and the sharing of personal information, the usual protections are retained by clause 16. Part 4 sets out miscellaneous provisions relating to the tabling of reports in Parliament, personal liability protections and regulation-making powers.

Part 4 also contains clause 20, which provides both for the standard five-year review of the bill and that the commission be evaluated at least once every five years. The key question will be whether the commission has made a difference to the lives of people in New South Wales. I am sure it will. In addition to this, the commission's accounts and financial statements will be subject to review by the Audit Office. That is provided for in schedule 3, where the bill amends the Public Finance and Audit Act 1983 to include the commission as a

statutory body. We are now reaching the final provisions of the bill, with many being procedural or machinery in nature. Schedule 1 provides machinery provisions relating to the commissioner and deputy commissioners, including remuneration, acting arrangements and vacancies of office. Schedule 2 allows for the making of regulations of a savings and transitional nature. Schedule 2 allows for the making of regulations of a savings and transitional nature.

I confirm the Government's initial priorities for the commission and assure the House that they have not been forgotten. They are that the commission consider how we can better manage the experience of people with mental illness, their families and carers; divert the mentally ill from the prison system; and help ensure smooth operation of the Mental Health Review Tribunal. This bill provides the organisational structure, functions and powers for a commission that will address these priority issues and the Government's broader reform objectives for mental health. Mental health reform continues to be a priority of this Government. The Mental Health Commission is expected to commence operation by 1 July 2012.

I am especially grateful to the people with mental illness, their families and carers who shared their experiences during consultations. The bill has been strengthened significantly through their courage in sharing what they have encountered in the system of care in New South Wales. I also extend my thanks to members of the House and others on the task force and its working groups. They have shown great commitment to this process and have provided their expertise and counsel over the past months. In particular I acknowledge Mr Sebastian Rosenberg, who provided expert facilitation and specialist advice to me and the task force; Ms Jenna Bateman, who represented the interests of the community-managed mental health sector; Dr David Chaplow, an internationally renowned psychiatrist, who has extensive experience in relation to the New Zealand Mental Health Commission; and Professor Allan Fels, who provided his personal experience from the carer perspective and also his professional expertise particularly in relation to governance.

I congratulate Professor Fels on his appointment as Commissioner of the National Mental Health Commission. I look forward to an ongoing dialogue and productive relationship with him. I add that it is no surprise that Alan Fels, who took part in the development of the commission in New South Wales, was approached by the Federal mental health Minister for this position so that they could tap into the expertise and background gained from his experience in New South Wales. I also acknowledge Ms Julie HouriQan Ruse, who highlighted so eloquently the experience of consumers to inform the work of the task force; Professor Dan Howard, who provided more than 30 years of legal experience, including as a member of the Mental Health Review Tribunal; the Hon. Dr Brian Pezzutti, who is no stranger to most of us and remains a member of the Government's Mental Health Priority Taskforce; and Professor Alan Rosen, a renowned community psychiatrist and advocate for mental health reform who brought a clinical perspective, in particular, focused on quality improvement.

I acknowledge the particular contributions to the success of the task force of Dr Mary Foley, Director General of the Ministry of Health, and Mr David McGrath, Director of Mental Health and Drug and Alcohol Programs at the ministry. I also acknowledge and thank those other government officials who participated in this work. Finally, I extend thanks to my Cabinet colleagues for their commitment to mental health reform, particularly Minister Skinner, the Attorney General, Minister Gallacher, Minister Goward and, of course, the Deputy Premier and the Premier. They all brought a particular passion to this work and an undoubted awareness of what needed to be done. I thank them all for their contributions. On the front page of the *Sydney Morning Herald* this morning is a headline related to mental health which, possibly for the first time, is a positive headline. Hopefully this indicates a change in the way in which people engage in this debate so that we can work together as a community to improve the lives of those touched by mental illness. I commend the bill to the House.