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MENTAL HEALTH AMENDMENT (STATUTORY REVIEW) BILL 2014

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [10.51 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Mental Health Amendment (Statutory Review) Bill 2014 on behalf of the New South Wales Liberals and Nationals Government. The purpose of this bill is to amend some sections of the Mental Health Act 2007 to reflect contemporary language, improve operational clarity and oversight arrangements, and align with best practice in mental health.

The Government has undertaken an extensive roots and branches review of the legislation, along with extensive consultation. Eight community consultation forums took place across New South Wales. Over 500 people attended these forums and 95 written submissions were received, including from consumers, families and carers, health professionals, service providers, carer networks, emergency services, academics and government agencies.

The review and consultation were undertaken to ensure that the Act is fit for purpose and offers adequate protections to the rights of those with mental illness in New South Wales, whilst also providing adequate protection to such persons and the community from potential serious harms caused by mental illness.

The outcome of the review was that the policy objectives of the Act remain largely valid and provide an appropriate legislative framework for the mental health system going forward.

Broadly, the view expressed during the consultation process was that the structure of the Act is robust, and on balance the content of the Act is supported.

However, this Government has heard, and acknowledges, the community's clear desire for change, in line with world's best practice and our mental health reform agenda.

The community has stated that there needs to be increased acknowledgement of recovery-focused treatment as a key object of the Act, greater access to emergency mental health care, particularly in rural and regional areas, and improved assistance to consumers and carers to navigate the mental health system.

We have listened.

The bill acknowledges recovery in the treatment of mental illness, and provides that consumers of mental health services actively participate in treatment decisions and have their views and preferences respected as much as possible.

These changes align with current national and international trends toward a more consumer-led approach to mental health treatment.

It is vitally important that an individual with a mental illness is involved in their treatment decisions. This bill proposes to amend section 68 of the Act to add an additional principle of care and treatment, which clarifies that every reasonably practicable effort should be made to obtain the individual's consent to treatment and recovery plans.

Further, the principles of care and treatment will now expressly provide that the capacity of individuals to consent should be monitored. There are unfortunate circumstances where a person with a mental illness does not have capacity to consent to the principles of care and treatment. This Act provides that in these situations, the individual should be supported to understand their treatment and recovery

plans.

New South Wales will maintain the concepts of "risk of serious harm" and "no other appropriate care of a less restrictive kind being reasonably available" as the thresholds for involuntary treatment in the Act.

However, in recognition of the importance of individual-led treatment, the bill provides that every effort should be made to obtain the consent of individuals who have capacity, and those who can be supported, when developing treatment plans and recovery plans for their care, and have their wishes considered by clinicians when their treatment plans are being developed.

We have heard feedback from carers that they often feel ignored and frustrated when trying to navigate the mental health system and ensure that their loved ones receive the support and care they need.

We have listened.

Carers and families play a vital role in monitoring, treating and supporting those with a mental illness. This bill recognises the importance of carers and families in these roles and strengthens the provisions relating to their role within the Act.

The aim of the changes is to enable greater carer involvement in treatment decision-making and provide better dissemination of information.

This includes being entitled to provide input to clinical decisions about their loved ones.

Further, the bill clarifies that the current rights of primary carers regarding access to information will apply when a consumer is on a community treatment order.

The primary carer provisions in the Act at section 71 will be amended, including replacement of the term "primary carer" with the term "designated carer" to reflect the fact that this position does not always provide a primary care role for the individual.

Consumers will now be able to nominate up to two designated carers and specify their access to information. This reflects the common occurrence that people with a mental illness often have more than one carer providing them with support.

In addition, the bill identifies a new type of carer at section 72A: the "principal care provider", who is the person primarily responsible for providing care to the individual.

The principal care provider will be entitled to receive information, such as admission and discharge advice, important for their role in supporting the individual experiencing mental illness.

This extends the principles of the Act that require carers to remain informed. Authorised medical officers will be responsible for making reasonable attempts to identify the principal care provider.

All persons in New South Wales have a right to seek mental health treatment; however, the decision to admit a person for treatment is a clinical judgement made at the time of presentation.

During the review some stakeholders raised concerns that, on occasion, there are poor outcomes for persons who are taken to declared mental health facilities and who are not involuntarily admitted, or who are discharged into the community.

The specific concern raised was that the views of others [such as carers, family, and police and ambulance officers] are not always adequately taken into account by the assessing medical practitioners when making decisions regarding involuntary treatment under the Act.

The bill addresses these concerns and the amendment at section 72B strengthens mental health assessment processes by requiring clinicians, when determining whether a person should be detained in a mental health facility, to seek and consider the views of consumers, carers, family members, treating community psychiatrist or general practitioner and emergency service providers, where it is reasonably practicable to do so.

This amendment ensures that, where reasonably practicable, a decision regarding involuntary treatment under the Act is made using a combination of the clinical expertise of the assessing medical practitioner and information provided by those listed above who play a role in caring, treating and monitoring the individual suffering from mental illness.

The bill proposes a new requirement at section 9 of the Act for voluntary patients who have been in a mental health facility for more than 12 months to have a Mental Health Review Tribunal hearing.

This hearing will review the case and determine whether the person has the capacity to consent to stay as a voluntary patient, and whether the patient is likely to benefit from further care or treatment as a voluntary patient.

It is vitally important that all patients, whether voluntary or involuntary, know their rights. Under the current legislation, all involuntary patients are to be provided with a statement of rights.

Under the proposed new section 74A all voluntary patients will also be provided with a statement of rights that articulates their rights regarding the provision of treatment, access to information and advocacy, and appeal mechanisms.

We have heard feedback about the issues faced by emergency services personnel at the coalface when trying to ensure that those requiring mental health care receive the treatment they require.

We have listened.

The bill clarifies functions and increases access to timely assessment and emergency mental health care, particularly in rural and regional New South Wales.

Under proposed new provisions at section 19A and section 27A of the Act, more clinicians will be empowered to undertake assessments under the Act including medical practitioners from another facility or local health district, and accredited persons.

Accredited persons are experienced and specially trained and appointed health practitioners who may be nurses, psychologists or social workers who supplement the numbers of doctors in emergency departments and community settings.

The issue of accredited persons undertaking Form 1 assessments [for the continued detention and examination at a declared mental health facility] was raised repeatedly during consultations as a possible solution to address access equity problems, particularly in regional and rural areas.

Another way we are increasing access to timely assessment and emergency mental health care is by increasing the numbers of declared mental health facilities and the use of video-link technology to facilitate assessments under the Act and prevent unnecessary long-distance transports.

Under section 27A of the Act, where authorised medical officers who are not psychiatrists are making decisions via audiovisual link, or accredited persons are making decisions, for example determining whether a person is mentally ill or mentally disordered, they must consult with a psychiatrist if it is reasonably practicable to do so.

This will ensure appropriate governance arrangements and clinical supervision of practitioners occurs when mental health assessments are undertaken under the new provisions of the Act.

The New South Wales Government is working to ensure prompt action to increase the number of declared mental health facilities across New South Wales, particularly in rural and regional New South Wales.

This will ensure those who face mental ill-health and their carers do not have to travel as far to access mental health treatment. I would like to thank the NSW Police Force and NSW Ambulance for working with the Ministry of Health to identify priority sites for inclusion as declared mental health facilities.

One of the most heartbreaking elements of mental illness is its effect on young people in our society.

The bill strengthens provisions with regard to young people being treated under the Act.

This includes requiring that all young people [those who are 16 years and under] must be represented by a lawyer when they are subject to a Mental Health Review Tribunal hearing.

If legal representation is not available a hearing may proceed at the discretion of the Mental Health Review Tribunal where it is deemed to be in the person's interest to proceed.

This may include, but not be limited to where the tribunal would be discharging the young person at the hearing and waiting for legal representation would unduly delay the release of that young person.

The bill also provides that when electroconvulsive therapy is proposed for any person under 16 years of age, an assessment by a psychiatrist with child and adolescent expertise must be provided.

It is important to note that electroconvulsive therapy for people under 16 years of age is used very rarely, but when it is, we want to ensure that a psychiatrist with expertise with young people undertakes an assessment of the patient.

Further, the bill requires the Mental Health Review Tribunal to conduct a hearing that considers the appropriateness of the treatment for a young person, even if the young person has provided informed consent for the treatment.

It is important to note that whilst the Mental Health Act may be an appropriate mechanism to effectively deal with a number of issues in mental health, in many cases such issues can be more appropriately

dealt with through policy or regulations, both of which offer more flexibility and capacity for amendment than legislation.

In addition, legislation is often not the most appropriate mechanism for promoting best practice and clinical standards.

As a result, some issues raised during the review are being addressed through policy mechanisms and policy is also being used to support the amendments made to the Act.

An example of one such issue where it was determined that legislative changes were not required is the current ban on psychosurgery within the Act.

Extensive consultation found broad support for retaining the current prohibition on psychosurgery within the Act and for retaining the current process whereby regulatory exemption to the ban may occur for certain procedures and conditions.

Should evidence emerge in the future that supports the efficacy of any psychosurgery procedure in the treatment of mental illnesses or mental disorders, regulatory exemption and supporting policy can be considered.

This Government is committed to reforming the mental health sector and aligning it with world's best practice. We are committed to future-proofing the system by building the capacity of the workforce, strengthening clinical and legal oversight and governance of decisions made under the Act. We will increase access to timely assessment in more locations and provide an opportunity for the people experiencing mental illness to drive their own health care and outcomes.

I commend the bill to the House.