



New South Wales

# Mental Health Amendment (Statutory Review) Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to amend the *Mental Health Act 2007* (the *Principal Act*) as follows:

- (a) to include in the principles for the care and treatment of people with a mental illness or mental disorder a requirement to consider the views and expressed wishes of those people in developing treatment and recovery plans and a requirement relating to obtaining consent, where reasonably practicable, to such plans,
- (b) to extend the reach of existing requirements to consult with and inform carers of persons with a mental illness or mental disorder by enabling a person to nominate more than one carer for that purpose and recognising a category of individuals who are principal care providers,
- (c) to enable a voluntary patient to be detained in a mental health facility for up to 2 hours for the purpose of a review by a medical officer to ascertain whether the patient should be detained in the facility for assessment,
- (d) to provide for alternatives to personal examination or observation of a person by a medical practitioner where such examination or observation is not possible for the purpose of determining whether to detain the person in a mental health facility for assessment or to hold a mental health inquiry,
- (e) to enable community treatment orders to be made in additional proceedings and to make further provision about consultation on and notice of community treatment orders,
- (f) to tighten the requirements to be met for administering electro convulsive therapy (*ECT*) to persons under the age of 16 years,

- (g) to amend provisions relating to non-psychiatric treatments to remove provision for voluntary patients and for greater consistency with similar provisions in other legislation,
- (h) to require persons under the age of 16 years to have legal or other representation in any proceedings before the Mental Health Review Tribunal (the *Tribunal*),
- (i) to make other minor amendments, to update references and expressions and to enact provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

## 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 a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Mental Health Act 2007 No 8

### Care, capacity and consent

**Schedule 1 [2]** includes in the objects of the Principal Act the object of promoting the recovery of persons who are mentally ill or mentally disordered.

**Schedule 1 [3]** amends the objects of the Principal Act to remove references to control of patients so as to reflect a focus on the care and treatment of patients.

**Schedule 1 [4]** amends the objects of the Principal Act to recognise the provision of treatment for the purpose of protecting a patient or other persons from harm.

**Schedule 1 [34]** inserts a requirement to support people with a mental illness or mental disorder to pursue their own recovery in the principles set out for care and treatment.

**Schedule 1 [35]** adds to the principles for the care and treatment of people with a mental illness or mental disorder the principles that people under the age of 18 years should receive developmentally appropriate services and that the cultural and spiritual beliefs and practices of people who are Aboriginal persons or Torres Strait Islanders should be recognised. The amendment also provides for special needs related to disability or sexuality to be recognised in care and treatment.

**Schedule 1 [36]** updates a reference to treatment plans.

**Schedule 1 [37]** adds to the principles for the care and treatment of persons with a mental illness or mental disorder a new principle requiring that every reasonably practicable effort should be made to obtain the consent of people with a mental illness or mental disorder to treatment plans and recovery plans, to monitor their capacity to consent and to support persons who lack the capacity to consent to understand those plans.

**Schedule 1 [38]** inserts a right for carers to be kept informed and involved, and to have information provided by them considered, in the principles relating to the care and treatment of persons with a mental illness or mental disorder.

### Designated carers and principal care providers

**Schedule 1 [6]** inserts definitions of *designated carer* and *principal care provider*.

**Schedule 1 [11] and [14]** enable the principal care provider of a person to make a written request that the person be detained in a mental health facility and also update references to primary carers so that they refer to designated carers.

**Schedule 1 [12]** prohibits a mental health certificate from being given for a person if the medical practitioner or accredited person giving the certificate is the principal care provider of the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [83]** makes a consequential amendment.

**Schedule 1 [19]** enables a person who has been brought to a mental health facility by a police officer and who is not to be further detained to be discharged into the care of the person's principal care provider. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [21]** enables the principal care provider of an assessable person to appear at a mental health inquiry and also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [20]** makes a consequential amendment.

**Schedule 1 [25]** enables the principal care provider of an involuntary patient or person detained in a mental health facility to apply for the discharge of the patient or person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [33], [39], [40], [67] and [69]** update references.

**Schedule 1 [41]** makes it clear that only individuals are included in the class of carers who may be designated carers.

**Schedule 1 [42]** includes the extended family and kin of a patient who is an Aboriginal person or a Torres Strait Islander in the category of persons who may be included as relatives for the purposes of determining the designated carer of a patient.

**Schedule 1 [43]** enables a person to nominate up to 2 designated carers.

**Schedule 1 [44]** specifies that the principal care provider of a person is the individual who is primarily responsible for providing support or care to the person. An authorised medical officer of a mental health facility or a director of community treatment may determine who is the principal care provider of a person for the purposes of complying with requirements to give notice and other requirements. Requirements relating to principal care providers need not be complied with if to do so may put the principal care provider or the person being cared for at risk of serious harm.

**Schedule 1 [45]** extends to the principal care provider of a person who is a patient or a person detained in a mental health facility the right to receive information about medication administered to the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [47]** requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of a person within 24 hours after the person is detained in the facility. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [48]** requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of an assessable person of a proposed mental health inquiry. The amendment also updates a reference to a primary carer so that it refers to a designated carer. **Schedule 1 [49]** makes a consequential amendment.

**Schedule 1 [50]** requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of a patient or person detained in the facility of certain events relating to the patient or person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [51]** requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to ensure that the principal care provider of a person is consulted in relation to the person's discharge and subsequent treatment or actions. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [52]** requires an authorised medical officer of a mental health facility, while planning the discharge of a person, to take all reasonably practicable steps to consult with agencies providing relevant services to the person and the principal care provider. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [53]** requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to ensure that the person and the principal care provider of a person who is discharged from the facility are provided with appropriate information as to follow-up care. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [71]** extends the advocacy role of official visitors to matters raised by the principal care provider of a patient. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [72]** enables the principal care provider of a patient or other person treated at a mental health facility to request that an official visitor visit the facility. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [73]–[75]** enable the principal care provider of a patient or person detained in a mental health facility or of an affected person under a community treatment order to notify the medical superintendent of the facility or the director of community treatment that the principal care provider wishes to see an official visitor and requires an official visitor to be informed of that wish within 2 days. The amendments also update references to a primary carer so that they refer to a designated carer.

**Schedule 1 [80]** prevents a disclosure of information obtained in connection with mental health legislation to a principal care provider of a person from being a prohibited disclosure if it relates to the care or treatment of the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [86], [91], [93] and [94]** update the mental health certificate form and the statement of rights for persons detained in mental health facilities to reflect the amendments made by the proposed Act to the rights and responsibilities of designated carers and principal care providers.

#### **Detention in mental health facilities**

**Schedule 1 [7]** requires voluntary patients in mental health facilities to be reviewed by the Tribunal at least once every 12 months if they have been a patient (either voluntary or involuntary) in the mental health facility for a continuous period of more than 12 months.

**Schedule 1 [8]** requires the Tribunal to consider whether a voluntary patient is likely to benefit from further care or treatment as a voluntary patient when it reviews the patient.

**Schedule 1 [9]** enables a voluntary patient in a mental health facility to be detained for up to 2 hours to enable an authorised medical officer to determine whether to take action to detain the person in the mental health facility.

**Schedule 1 [13]** enables a medical practitioner or accredited person to examine or observe a person by using an audio visual link for the purpose of completing a mental health certificate, if it is not reasonably practicable for the person to be personally examined or observed by a medical practitioner or accredited person. **Schedule 1 [81]** makes a consequential amendment.

**Schedule 1 [15]** enables a medical practitioner to examine or observe a person by using an audio visual link, or an accredited person to personally examine a person, for the purpose of determining whether the person is a mentally ill person or mentally disordered person who should be detained in a mental health facility, if it is not reasonably practicable for the person to be personally examined or observed by an authorised medical officer or other medical practitioner.

**Schedule 1 [16], [17], [85] and [87]** make consequential amendments.

**Schedule 1 [18]** extends from one hour to 2 hours the period for which a person who has been brought to a mental health facility by a police officer, and who is not to be further detained, may be kept at the facility pending the person's apprehension by a police officer.

**Schedule 1 [22]** provides, in addition to other actions that may already be taken after a mental health inquiry, that a person may be discharged into the care of a designated carer or the principal care provider of the person.

**Schedule 1 [23]** provides, in addition to other actions that may already be taken by the Tribunal after a review of an involuntary patient, that the patient may be discharged into the care of a designated carer or the principal care provider of the patient.

**Schedule 1 [26]** provides that the Tribunal may defer the discharge of a person on a successful appeal against a refusal to discharge the person for a period of up to 14 days.

**Schedule 1 [44]** requires an authorised medical officer, other medical practitioner or accredited person to consider (if reasonably practicable) information provided by a designated carer,

principal care provider, relative, friend, treating health professional or person who has brought someone to a mental health facility when determining whether a person is a mentally ill person or a mentally disordered person or should be discharged.

### **Community treatment orders**

**Schedule 1 [27]** makes it clear that an application for a community treatment order may be made in proceedings for an appeal against a refusal of an application to discharge an involuntary patient or person detained in a mental health facility.

**Schedule 1 [28]** removes the requirement for 14 days notice of an application for a community treatment order for a person who is not detained in a mental health facility, if the person is already the subject of a community treatment order or the Tribunal decides that it is in the best interests of the patient that the application be heard earlier.

**Schedule 1 [29]** enables the Tribunal to defer for up to 14 days the discharge from a mental health facility of a person who is made subject to a community treatment order. **Schedule 1 [24]** makes a consequential amendment.

**Schedule 1 [30]** extends to the principal care provider of a person who is subject to a community treatment order the right to request information about medication administered to the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

**Schedule 1 [31]** requires the director of community treatment of a declared mental health facility to consult the affected person, any designated carer or principal care provider of a person subject to a community treatment order before revoking the order and to notify the Tribunal of a revocation or if no further application for an order will be made.

**Schedule 1 [32]** requires the director of community treatment of a declared mental health facility to notify any designated carer or principal care provider of a person subject to a community treatment order of the order and if the order is varied or revoked or an application is made for a further order.

### **Electro convulsive therapy**

**Schedule 1 [55]** excludes persons under the age of 16 years from the category of persons who can receive ECT on the basis of giving informed consent and a medical certificate.

**Schedule 1 [56]** requires that an ECT determination be given by the Tribunal after it holds an ECT inquiry before a person under the age of 16 years can receive ECT.

**Schedule 1 [57]** provides that ECT may be administered to a person under the age of 16 years in accordance with an ECT determination made by the Tribunal at an ECT administration inquiry.

**Schedule 1 [59]** provides that at least one of the 2 medical certificates required before an authorised medical officer may apply for an ECT administration inquiry about a person under the age of 16 years is to be a certificate given by a psychiatrist with expertise in the treatment of children or adolescents. **Schedule 1 [58]** makes a consequential amendment.

**Schedule 1 [61]** provides that the Tribunal is, on an ECT administration inquiry, to determine whether or not an ECT determination should be made in relation to a person under the age of 16 years. **Schedule 1 [60]** makes a consequential amendment.

**Schedule 1 [64]** sets out the elements of an ECT determination for a person under the age of 16 years. **Schedule 1 [62]** and **[63]** make consequential amendments.

**Schedule 1 [65]** requires the Tribunal to consider the views (if known) of any designated carer, principal care provider or parent of a person who is under the age of 16 years when holding an inquiry into ECT treatment for the person.

**Schedule 1 [66]** enables the President of the Tribunal to inspect at any time the register kept by a mental health facility relating to ECT treatments.

### **Other treatments**

**Schedule 1 [68]** removes the ability of the Secretary of the Ministry of Health to consent to the performance of a surgical operation on an involuntary patient in circumstances where the patient

is capable of giving consent but refuses to give that consent or neither gives nor refuses to give that consent. It also removes voluntary patients from the categories of persons who are incapable of consenting and in respect of whom consent may be given to a surgical procedure by the Secretary. The *Guardianship Act 1987* will instead apply in such a case.

**Schedule 1 [70]** removes the ability of the Tribunal to consent to the performance of a surgical operation on a voluntary patient in circumstances where the patient is incapable of giving consent. The *Guardianship Act 1987* will instead apply in such a case.

### **Other amendments**

**Schedule 1 [1] and [5]** update references to the Director-General of the Department of Health and the Department of Health.

**Schedule 1 [10], [78] and [84]** update references to developmental disability of mind.

**Schedule 1 [46]** requires voluntary patients to be given an oral explanation and a written statement of their legal rights and other entitlements as soon as practicable after becoming voluntary patients. **Schedule 1 [95]** sets out the form of the written statement.

**Schedule 1 [54]** updates references to electrodes for the purposes of the definition of *psychosurgery* in relation to prohibited treatments.

**Schedule 1 [76]** enables a mentally ill person or mentally disordered person who is in a health facility other than a mental health facility because the person requires treatment for another illness or condition to request to see an official visitor. The Principal official visitor is to arrange for the visit to be made as soon as practicable.

**Schedule 1 [77]** removes the requirement for the annual report of the Tribunal to report on the number of persons detained as involuntary patients for 3 months or less.

**Schedule 1 [79]** requires a person who is under the age of 16 years to be represented before the Tribunal by an Australian legal practitioner or another representative chosen by the person and approved by the Tribunal.

**Schedule 1 [82]** revises a provision of the mental health certificate to better reflect the provisions of the Principal Act.

**Schedule 1 [88]** updates a heading as a result of the insertion of a statement of rights for voluntary patients.

**Schedule 1 [89]** inserts information about appeal and discharge rights into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

**Schedule 1 [90]** inserts information about operations into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

**Schedule 1 [92]** inserts information about the right to see an official visitor into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

**Schedule 1 [96]** extends the maximum period for which a person may be appointed as an official visitor from 3 years to 4 years.

**Schedule 1 [97]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.