DRAFT SECOND READING SPEECH

HON. MICHAEL FERGUSON MP

Mental Health Amendment 2016

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Madam Speaker, I move that the Bill be read a second time.

The Bill amends the *Mental Health Act 2013* to improve the Act's operation.

Madam Speaker, the Act establishes a rights-based framework for the assessment and treatment of people with serious mental illness.

When the Act commenced in 2014 it introduced a significantly different framework for assessment and treatment than had applied previously.

Before the Act's commencement, decisions about treatment were made under the *Guardianship and Administration Act 1995* while decisions about treatment setting were made under the *Mental Health Act 1996*.

Decisions about treatment and the treatment setting are now made at the same time, by one body, and under one Act.

Under the old framework, decisions about detention were made by medical practitioners, following an assessment of the person's risk to self or others.

Now, decisions about treatment are made by an independent Tribunal and following an assessment of the person's decision-making capacity.

This means that decisions which infringe a person's rights are made independently, and are subject to independent oversight and review.

Tasmania was one of the first jurisdictions to make consideration of a person's decision-making capacity a threshold criterion for involuntary treatment and detention, placing the State at the forefront of mental health legislation.

I acknowledge the work of the previous Government in developing the Act and I am proud to have been a part of this important step forward in the treatment and care of people with mental illness in Tasmania. I am sure that other Members of this Chamber share my sentiments.

As may be expected with the implementation of a new legislative framework, the Act has taken some time to bed down.

Key stakeholders have worked collaboratively to streamline administrative processes and to resolve issues as they've arisen and I commend all concerned for their efforts.

However there are some aspects of the legislation's operation that it has not been possible to resolve administratively, and these aspects require legislative amendment.

As with any new legislation, drafting anomalies have also been identified.

The Bill has been drafted to address these issues and improve the Act's operation.

Amongst other matters, the Bill streamlines the assessment and treatment pathway established by the Act.

The Act currently requires a medical practitioner to be in possession of an application before making an Assessment Order. This process can be cumbersome and may delay the lawful assessment of critically unwell patients. The Bill addresses this issue by removing the requirement for an application. This will enable a medical practitioner to make an Assessment Order with, or without, an application.

The Act also currently requires treatment that is given to an involuntary patient or forensic patient to be authorised by the Mental Health Tribunal or by a Chief Psychiatrist as urgent circumstances treatment. Some patients may have capacity to give informed consent to some treatments but not others; and the Act also recognises this.

Under the Act, the urgent circumstances treatment process requires specific authorisation from a Chief Psychiatrist and involvement of up to two other clinicians. This can be problematic overnight and in regional areas, where access to the required number of clinical staff may be limited.

This can be detrimental to patients, whose state of mental health may decline while the authorisation process is completed.

The Bill addresses this issue by shifting responsibility for authorisation from a Chief Psychiatrist to an approved medical practitioner - generally a senior psychiatrist. The Bill also removes the requirement for additional clinicians to be involved.

The circumstances in which urgent circumstances treatment may be given have not changed nor have the reporting and oversight arrangements that apply. The intention is simply to remove unnecessary administrative hurdles to the provision of urgently needed treatment for critically unwell patients.

The Bill also confirms the Mental Health Tribunal's ability to make a Treatment Order that allows a patient to be treated in hospital, or in the community, and to move between these treatment settings in relevant circumstances.

The Act currently requires the Mental Health Tribunal to review all Treatment Orders within 30 days of the Order being made, and then again in 90 days, , provided the Order is still in effect at that time.

The Mental Health Tribunal has expressed concern about the resource intensive nature of this review schedule. This concern is also shared by clinicians, who have suggested that the time required to prepare for and attend hearings unreasonably detracts from the time available to provide clinical care.

To address these issues, the Bill amends the Act to require the Mental Health Tribunal to review a Treatment Order within 60 days, and then again in 180 days, after the Order is made, provided of course that the Order is still in effect at that time.

It is important to note that a patient will still be able to request a review at any time during the course of a Treatment Order.

Finally, the Bill makes a number of other amendments to address drafting inconsistencies and to provide increased clarity to consumers and clinicians about their rights and responsibilities under the Act.

This includes amendments to confirm the Mental Health Tribunal's ability to review the authorisation of treatment for forensic patients, to require consultation with the victim of an offence before a forensic patient is granted leave, and to clarify how documentation should be given to patients and others under the Act.

The Bill also clarifies the relationship between Treatment Orders and treatment plans, and gives medical practitioners who are transporting patients by air ambulance the power to sedate patients in limited circumstances.

These amendments have been recommended by clinicians and are supported by the Mental Health Tribunal and other stakeholders.

The amendments are not intended to alter the Act's fundamental principles or provisions. Rather, they are designed to clarify processes and ensure the Act's improved operation.

The Act requires the Minister for Health to complete a comprehensive review of the Act's operation by February 2020. The 2020 review will provide an opportunity to consider the Act's fundamental features in detail, including concepts of decision-making capacity.

It is the Government's intention to commence the review, once the amendments resulting from the Bill have been in operation for a period of time, to ensure that the review can also consider the effectiveness of the operational improvements we are seeking to make here today.

Madam Speaker, I commend the Bill to the House.