

SECOND READING SPEECH

Mental Health Bill 2012

Mr Speaker

The purpose of this Bill is to ensure that persons with a mental illness are treated within a framework that is consistent with a human rights approach and that is focussed on consumers and their rights.

The Bill recognises the ability of individuals with capacity to make their own treatment choices; while enabling treatment to be provided to persons lacking capacity where this is necessary for the person's own health and safety or the safety of others.

As you all know, the *Mental Health Bill 2012* has been drafted in response to a review of the *Mental Health Act 1996*, which together with the *Guardianship and Administration Act 1995* regulates the treatment and care of persons with a mental illness.

While the current *Mental Health Act 1996* provides authority for the detention of persons with a mental illness, the authority for treatment for persons lacking decision-making capacity is contained within the *Guardianship and Administration Act 1995*.

The review process highlighted deficiencies in the current legislative framework, suggesting that working between the two Acts is unnecessarily complex.

Additionally, the review process highlighted the inability for the current framework to provide an appropriate level of review and safeguards for people being involuntarily treated for a mental illness.

A draft exposure version of the Bill and accompanying explanatory guide were publicly released for a six week consultation period in late June 2011. This consultation period was then extended for an additional six weeks in response to requests from a number of advocacy groups and peak body groups representing consumers, carers and community sector service providers.

The public consultation period resulted in over 40 individuals and groups providing written submissions in response to the draft exposure Bill. Others provided feedback in person either at a number of public consultation forums held around the State, or directly to Statewide and Mental Health Services staff.

In total there has been nearly six months of public consultation around the current and proposed new Mental Health Act. This highly consultative approach has resulted in valuable and constructive feedback, demonstrating support for the overall focus of the new legislation, and a real interest and commitment to getting the new Act right.

This comprehensive and extensive process has been overseen by an Advisory Committee and a Drafting Committee.

The Advisory Committee is chaired by a senior psychiatrist from Statewide and Mental Health Services and comprises key stakeholders including representatives from the Department of Police and Emergency Management, Advocacy Tasmania Inc, the Mental Health Council of Tasmania and Official Visitors; the President of the Mental Health Tribunal; and other senior clinical representatives.

The Drafting Committee is chaired by the Chief Executive Officer Statewide and Mental Health Services and includes the chair of the Advisory Committee, representatives from the Departments of Justice and Health and Human Services, and the President of the Mental Health Tribunal.

I would like to extend my sincere thanks to members of both committees for the invaluable advice, time and commitment they have given in helping develop the *Mental Health Bill 2012* for Tasmania.

Since the *Mental Health Bill 2012* was tabled in Parliament on 21 June 2012, I have received representation from the Mental Health Council of Tasmania to amend the *Mental Health Bill 2012*, to provide greater clarity in relation to the jurisdiction of the Family Law Court and the Supreme Court to consent to treatment for a child in circumstances where parents are in dispute. I will be proposing an amendment to the *Mental Health Bill 2012* in committee to clarify that issue.

Today, I am proud to stand before you, and table a Bill that balances consumer rights with the need for treatment, and recognises the important role played by carers and family members of persons with a mental illness.

The *Mental Health Bill* is rights focussed, and reflects notions of consumer autonomy. It proposes what is effectively a substitute decision making framework for persons with a mental illness who, because of their illness lack decision making capacity and cannot make their own assessment and treatment decisions, and for whom treatment is needed to prevent harm to that person's health or safety, or the safety of others.

Currently, a person may be detained pursuant to the *Mental Health Act* against their will, and only be treated if informed consent is given, or the treatment is authorised by or under the *Guardianship and Administration Act*. This can result in a person with decision-making capacity, who refuses to give informed consent to treatment, being detained without being treated.

The Bill introduces decision-making capacity as a threshold test for determining whether or not people with a mental illness can be involuntarily treated. On this basis, the legislation will not enable a person with mental illness to be involuntarily treated or detained if they have decision-making capacity.

This Bill seeks to remedy the difficulties associated with the current framework, which sees decisions about the treatment of a person with a mental illness who lacks capacity made pursuant to the *Guardianship and Administration Act*; while decisions about the setting in which treatment should be given are made pursuant to the *Mental Health Act*.

The Bill establishes a streamlined and clarified treatment pathway featuring a single Treatment Order enabling treatment across a range of settings.

Currently, decisions about treatment setting for persons with serious mental illness are made by medical practitioners while decisions about treatment are commonly made by a person responsible, where this may be a family member, carer or friend of the person for whom consent is being given.

The Bill recognises the difficulty associated with making decisions of this kind and proposes that treatment and treatment setting decisions should be made by an independent Tribunal comprised of legal and medical experts. In addition, the Bill proposes these decisions should also be regularly reviewed.

The Bill proposes establishment of the statutory office of the Chief Civil Psychiatrist who, along with the Chief Forensic Psychiatrist, will have the power to intervene directly with respect to certain matters, to issue standing orders and clinical guidelines and to conduct internal reviews.

The Bill seeks to provide clarity for clinicians, for consumers and their families and carers and to clearly set out the rights that consumers have under the legislation. The legislation promotes a consumer centred approach to the assessment, treatment and care of persons with a mental illness and, if passed, will represent a significant improvement in the protection of the rights of mental health consumers in Tasmania.

I commend the Bill to the House.