

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Mental Health Amendment Bill 2018*

*\*check Hansard for delivery\**

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

Section 47A of the *Mental Health Act 2013* provides for a patient to be involuntarily admitted to an approved facility if the treating medical practitioner is satisfied on reasonable grounds that the patient's health or safety, or the safety of any other person has been, or is likely to be, seriously harmed. The medical practitioner must also be satisfied that admitting the patient is the only way to adequately address that risk.

Section 47A applies to a patient who is subject to a treatment order and has complied with that treatment order. In that respect it can be distinguished from section 47 of the Act, which may be applied to admit a patient who has failed to comply with their treatment order.

By virtue of sections 181(1)(d) and 42 of the Act, whenever a patient is admitted to an approved facility pursuant to either section 47 or 47A, the Mental Health Tribunal must be notified and must review the patient's treatment order within three days of notification.

The Act provides for the Tribunal to sit in divisions of one member, or three or more members chosen by the President. However, section 181(1)(f) currently requires that any review of a treatment order must be conducted by a division of three members. While the Tribunal can effectively conduct a one-member review within its existing resources, convening a three-member panel requires payment of a full four-hour fee to two additional members who work on a sessional basis.

Madam Speaker, section 47A was introduced into the Act through amendments that were made under the *Mental Health Amendment Act 2016*. The Mental Health Tribunal has advised that in the 12 month period since those amendments came into effect on 1 July 2017, the Tribunal held 82 three-member panel hearings for patients admitted under section 47A. The cost to the Tribunal to run these hearings with a three-member panel was approximately \$29,500. In some cases, these hearings occurred shortly after a mandatory 60-day or 180-day review of the treatment order under the Act.

The Tribunal has advised that where a patient has complied with their treatment order and the decision to admit the patient is a clinical one to prevent possible harm, there are no compliance issues that require the Tribunal's consideration. In most cases such a review can be effectively undertaken by single member of the Tribunal. In fact, prior to the commencement of section 47A last year, where a patient required readmission but was not in breach of their treatment order, all readmissions were reviewed by a single member of the Tribunal and the order varied to reflect the change in treatment setting.

The Tribunal has also advised that a significant number of patients find three-member hearings arising from a readmission to hospital very distressing, particularly given that periodic reviews are already mandated by the Act. In its submission during consultation on proposed changes to the

Act, the Mental Health Council of Tasmania noted that this process is often incredibly stressful for patients and, in many cases, detrimental to their treatment and recovery during a period of already heightened stress and ill-health.

Madam Speaker, this Bill addresses the issues I have just outlined.

It amends section 181(1)(f) of the Act to provide that where a patient has been admitted to an approved facility pursuant to section 47A to prevent possible harm, the mandatory review of that patient's treatment order in accordance with section 181(1)(d) of the Act may be conducted by a division of either one member or three or more members of the Mental Health Tribunal.

This amendment will provide the President of the Mental Health Tribunal with the flexibility to appoint, where appropriate, a division of one Tribunal member to review treatment orders for section 47A admissions. This will assist in reducing costs where matters are likely to be straightforward, as the Tribunal can conduct a one-member review within existing resources. One-member hearings are likely to be perceived as less confronting to admitted patients, who may already be feeling vulnerable at a stressful time.

I would like to emphasise that the requirement for a mandatory Tribunal review within three days of admission under section 47A will remain in place. During consultation, a number of stakeholders expressed the view that mandatory reviews serve as an important safeguard by allowing the Tribunal to consider the appropriateness and effectiveness of treatment, even where compliance with a treatment order is not an issue. The Government shares that view, and that is reflected in this Bill.

It is also important to note that the amendment does not affect reviews of treatment orders conducted for any other reason, including mandatory reviews following admission under section 47, mandatory reviews 60 days or 180 days after a treatment order is made, or reviews requested by a person with standing or initiated by the Tribunal at any other time. These will remain unchanged and will continue to be conducted by a three-member panel.

Madam Speaker, in developing the *Mental Health Act 2013*, which commenced in early 2014, great care was taken to ensure a balance between consumer rights and the need for treatment, while also recognising the important role played by carers and family members of people with a mental illness.

The Act contains a significant focus on the rights of patients and has an extensive review regime to ensure that those rights are protected. Section 47A and the review functions of the Tribunal have been, and will continue to be, consistent with the United Nations *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*.

Finally, I would like to take this opportunity to thank those stakeholders who provided submissions during the Government's consultation process, and whose valuable input has been taken into account in preparing the Bill. The Government is committed to ensuring that people with a mental illness can receive the assistance they need and are treated with dignity, respect and care.

I commend the Bill to the House