

DRAFT SECOND READING SPEECH

Hon Jeremy Rockliff MP

Mental Health Amendment Bill 2022

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Mr Speaker, I move -

That the Bill be now read for the second time.

The purpose of the Mental Health Amendment Bill is to make important amendments to the *Mental Health Act 2013* and related intersecting Acts as outlined in the Mental Health Act Review Outcomes report, endorsed by the Tasmanian Government in June 2020.

The Tasmanian Government is committed to the implementation of all 29 review outcome recommendations developed from broad stakeholder input, with the first of two stages of legislative changes being progressed in today's Bill.

The proposed amendments are fundamental and important changes to mental health legislation. The intent of the proposed amendments is to strengthen provisions that allow for improvements in the experience of Tasmanian involuntary mental health patients receiving assessment, treatment and care under the Mental Health Act.

Further, the proposed amendments ensure Tasmania's mental health legislation remains contemporary and fit for purpose, with a strong focus on respecting, recognising and upholding the rights of patients.

Additionally, this Bill proposes a series of amendments to update and clarify provisions of the Mental Health Act, which will improve its operation and the efficient delivery of mental health services.

The development of the Bill being tabled today has actively included many stakeholders and, importantly, people with lived experience. Consultation has included both consumers and carers through not only the consultation process, but also participating in the project steering committee, legislative working group and the forms and documentation working group.

I would like to specifically thank the consumer representatives involved for their time, passion and invaluable input to the development of these important amendments. Their expertise and voice provide us with vital insights into the challenges that consumers, families and carers can experience. These insights have helped us to enhance the mental health legislation through this Bill and the Review of the Act preceding it.

I will now outline the main proposed changes in more detail.

Harmonisation of the Principles and Rights for patients

The amendment Bill proposes that the principles and rights are updated to ensure they remain contemporary, are easier to interpret and apply in a mental health service setting. A new Chapter in the Bill, entitled 'Rights and Policies', gives prominence to the newly harmonised and updated rights and service delivery principles for forensic and civil mental health patients.

Importantly, the Bill introduces the right to receive assessment, or treatment, under this Act in accordance with the mental health service delivery principles – this intrinsic link will support the improved application and oversight of the service delivery principles, holding Tasmanian Mental Health Services to the highest possible standard.

All medical practitioners, nurses, police officers, and other persons exercising any responsibilities under the Mental Health Act now must have regard to the service delivery principles. These service delivery principles are listed in Schedule 1 of the Act and have been updated to ensure that they are clearer and inclusive of the relevant and contemporary concepts. The proposed amendments ensure that the rights of all patients are clearly stated.

There was strong support from stakeholders regarding:

- the inclusion of rights relating to personal factors of gender identity and distinct cultural and identity needs;
- the strengthening of patients' rights under the Act; and
- updates to clarify that a mental illness is not, on its own, a current or past expression of, or failure or refusal to express, a particular sexual preference or orientation or gender identity or expression.

Other welcome additions to the service delivery principles include the improved focus on robust clinical governance and quality and safety processes and ensuring that staff working in mental health services have access to the support, supervision and appropriate training, including cultural diversity training, required to maintain quality, safety and a highly skilled and appropriately accredited workforce.

The Bill also requires the promotion of the ability of persons with mental illness to make their own decisions including decisions about the person's assessment, treatment and recovery that involve a degree of risk. This acknowledgement of allowing a mental health patient to accept risk is one of several improvements that the Bill proposes so that decisions are supported on medical terms and do not patronise or condescend patients.

Further changes in this regard will remove the terminology of "protective custody" and replace it with "temporary detainment for the purpose of assessment."

Stronger support and protection for children and young people

I would like to note that there are specific principles relating to the promotion of the rights, wellbeing and safety of children, including as recipients of mental health services and as children of persons receiving mental health services.

This Government is committed to the protection and support of vulnerable Tasmanians, with children and young people being the most vulnerable. This amendment Bill strongly protects children and young people who are either assessed as needing mental health treatment and care or who are dependent on an adult who needs such care.

The Bill prescribes an updated and broader definition of parent, so that it better reflects contemporary care arrangements for vulnerable children by providing for a variety of legal or informal parenting relationships. This will ensure that children are better enabled to receive timely access to mental health treatment when they are not capable of providing consent and are reliant on a parent or parent figure to make these important decisions on their behalf.

Important amendments also clarify the provisions relating to the withdrawal of consent on behalf of children and young people under the Act. Currently, each parent of the child is required to agree to the withdrawal of consent. This was intended to provide for such situations where parents have joint custody of a child, but may differ in their opinion of the child's treatment, which can lead to interrupted and ineffective treatment of the child.

The Bill continues to provide for such a circumstance, and the parent who provided the original consent is still required to agree to any withdrawal of consent – but only where that original parent continues to act as a parent of the child and is capable of providing consent.

Changes to strengthen the role of the Official Visitor Program

The proposed changes to strengthen the role of the Official Visitor Program will also strengthen the rights of children and young people being assessed and treated under the Act by making it clear that:

- a child can make a complaint to an Official Visitor, regardless of whether they have the consent of a parent or guardian to make the complaint; and
- that the functions of an Official Visitor include checking that the additional requirements under the Act in relation to mental health services provided to a child are complied with by providers.

As noted in the Consultation Bill submission from the Commissioner for Children and Young People, Leanne McLean, *"It is important that the functions of the Official Visitors relating to children are carried out in a developmentally appropriate, child-safe and child-centred manner."* I look forward to seeing the improvements that implementation of these important reforms will deliver.

The Bill further includes operational improvements to streamline and support the oversight functions provided by the independent Official Visitors, including better access to records and the ability to raise matters of particular concern directly with the controlling authority of an approved facility, as well as the current options of the Minister and the Chief Psychiatrist.

These amendments will allow the controlling authority to become aware of any matters discussed with patients in a timely manner so that it may be addressed, only if appropriate to do so as determined by the relevant authority.

Seclusion, Restraint and Urgent Circumstances Treatment

Seclusion and restraint provisions are applied only as a last resort. The Government is committed to ensuring these practices are safely applied and must, in accordance with the new service delivery principle, promote recovery in the least restrictive manner that is consistent with the needs of persons with mental illness.

The Bill proposes significant amendments to ensure that the patient is less likely to be secluded or restrained longer than is necessary. Currently, the provisions for seclusion and restraint require the Chief Psychiatrist approval of the treatment every seven hours and examinations by an approved medical practitioner every 12 hours – although it is vitally important to note that most uses of seclusion or restraint in Tasmania are less than three hours.

The proposed amendments allow for a three-hour maximum authorisation of seclusion or restraint, replacing the current four hours. Only one extension of a further three hours may be authorised, with the Bill introducing a significantly reduced total authorisation time of six hours.

Tasmania will be the only jurisdiction with a maximum period of seclusion or restraint.

The current provisions providing for Urgent Circumstances Treatment are confusing and duplicative. The use of the words “patient’s best interests” are considered to be more patronising than informative.

The Bill requires that treatment is necessary for specific reasons, including for the patient’s health or safety, or the safety of other persons, and waiting for Tribunal approval would compromise outcomes and effectiveness of the treatment.

Simplification and streamlining of processes

During the Review of the Mental Health Act almost every submission from a consumer or advocacy group had one clear message – the Act is too difficult to understand. Make it simpler. This Bill includes a range of ways that this is being achieved.

The Bill combines the statutory roles of Chief Civil and Chief Forensic Psychiatrist. This will remove a large number of bureaucratic processes that have been entirely unnecessary, as both roles have only ever been held jointly by an individual since the Act commenced in 2014. This change will bring the singular title of Chief Psychiatrist in line with all other states and territories.

While this amendment will result in simpler processes and fewer forms, Members will note that it has not made for a simple Amendment Bill. Consequential amendments are proposed for the *Corrections Act 1997*, *Criminal Code Act 1924*, *Criminal Justice (Mental Impairment) Act 1999*, *Dangerous Criminals and High Risk Offenders Act 2021*, *Disability Services Act 2011*, *End-Of-Life Choices (Voluntary Assisted Dying) Act 2021*, *Justices Act 1959*, *Magistrates Court (Criminal And General Division) Act 2019*, *Sentencing Act 1997*, and the *Youth Justice Act 1997*.

Other process improvements include:

- Providing for intra-state transfer to an alternative approved hospital. Acknowledging that the many reasons a mental health patient may need or want to be relocated or transferred, such as a patient may be admitted in a region where they do not normally live, or they are not close to their support network while admitted.
- Streamlining the leave request process for inpatients by removing an unnecessary and bureaucratic step that a patient must apply for leave for it to be granted for non-medical reasons.
- Simplifying the Assessment Order process by removing the requirement for application of Assessment Order under the Act as it has been deemed to be optional and was not being used.

- Providing for situations where a forensic inpatient whose Order or Sentence is about to expire, but is assessed as needing to remain in the Secure Mental Health Unit due to serious ongoing mental health care and treatment needs. Such patients will receive better continuity of care by being able to be admitted directly to the Secure Mental Health Unit as a civil patient, rather than needing to be transported to an approved hospital for assessment. This has the additional benefit of improving security and safety at the approved hospital as this provision will only be used in regard to patients who cannot safely be detained at an approved hospital.
- Amending the timeframe for the Tribunal to review an admission to a Secure Mental Health Unit from three days to seven days. This change will align the review timeframes to other requirements in the Act relating to Tribunal reviews of transfer from prison.
- Bringing “special psychiatric treatment” formally within the informed consent framework. While the Act currently provides that special psychiatric treatment, which includes psychosurgery and the use of intracerebral electrodes to stimulate a person's brain, may only be provided with informed consent. The informed consent framework excluded special psychiatric treatment from its provisions as a result of it being excluded from the definition of treatment. The Bill corrects this anomaly.

Other important updates will ensure the Act definitions are accurate and aligned to its scope and objects. The Mental Health Act intentionally uses restrained definitions of the words “assessment” and “treatment”. These limitations are foundational to the application of the restrictive practices authorised under the Act.

Despite this, the current Act uses a variety of terms that are confusing and often used interchangeably. The terms “examine”, “monitor” and “evaluate” have different meanings to “assess” and therefore only “assess” is referred to in the definition of treatment, which is a more accurate term in context of the Act.

Further, terminology has been updated so that the Act refers to Aboriginal people in Tasmania rather than use of the term Aborigine, in line with the *Aboriginal Lands Act 1995*. This proposed amendment will ensure the Act remains contemporary and respectful to Aboriginal people in Tasmania.

As I have outlined, there are many amendments that are being proposed in the Bill before the House today. These amendments will strengthen the Mental Health Act and further protect vulnerable Tasmanians with serious mental health conditions being assessed, treated and cared for by mental health services in Tasmania.

I commend the Bill to the House.