



New South Wales

Mental Health Bill 2007

Explanatory note

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

Overview of Bill

The objects of this Bill are to make provision with respect to the care, treatment and control of mentally ill persons and mentally disordered persons and other matters relating to mental health. The Bill re-enacts the provisions of the *Mental Health Act 1990*, with amendments, generally in accordance with proposals relating to patients (other than forensic patients) arising from a statutory review of that Act.

The Bill is divided into Chapters, Parts and Divisions. Each Chapter deals with a discrete subject-matter relating to mental health.

Outline of provisions

Chapter 1 Preliminary

Chapter 1 (proposed sections 1–4) contains provisions relating to the citation and commencement of the proposed Act, as well as provisions defining words and expressions used in the proposed Act. The proposed Chapter also sets out the objects of the proposed Act in relation to the care, treatment and control of mentally ill persons and mentally disordered persons.

Chapter 2 Voluntary admission to facilities

Chapter 2 (proposed sections 5–11) sets out the circumstances in which a person may be admitted voluntarily to a mental health facility as a voluntary patient under the proposed Act. It also sets out the additional requirements relating to the voluntary admission of children and persons under guardianship. An *authorised medical officer* (that is, a medical superintendent of a mental health facility or a medical officer nominated by the medical superintendent) may refuse to admit a person as a voluntary patient and may discharge a person as a voluntary patient. A right of appeal is provided to the medical superintendent against any such decision by a medical officer nominated by the medical superintendent. The case of a voluntary patient must be reviewed at least once a year, if the patient remains in a mental health facility.

Chapter 3 Involuntary admission and treatment in and outside facilities

Part 1 Requirements for involuntary admission, detention and treatment

The Part (proposed sections 12–16) provides that a person must not be involuntarily admitted to, or detained in or continue to be detained in, a mental health facility unless an authorised medical officer is of the opinion that the person is a mentally ill person or a mentally disordered person and that no other care of a less restrictive kind is appropriate and reasonably available to the person. An authorised medical officer has a duty to discharge a person if not of that opinion. The Part sets out the criteria which a person who is suffering from mental illness or who is mentally disordered must satisfy before being considered to be a mentally ill person or mentally disordered person for the purpose of involuntary detention under the proposed Act or being made subject to a community treatment order under the proposed Act.

Part 2 Involuntary detention and treatment in mental health facilities

Division 1 Preliminary

The Division (proposed section 17) defines expressions used in the proposed Part.

Division 2 Admission to and initial detention in mental health facilities

The Division (proposed sections 18–33) sets out the circumstances in which a person may be brought to, and detained involuntarily in, a mental health facility under the proposed Act. The Division specifies the requirements that are to be satisfied before a person can be taken to and detained in a mental health facility, including on the

certificate of a medical practitioner or other person accredited by the Director-General of the Department of Health (the *Director-General*), on the information of an ambulance officer, after apprehension by a police officer, following the making of an order by a Magistrate or other authorised person in the case of a person who is physically inaccessible to ordinary medical examination or observation, on an order of a court or bail officer, on transfer from another health facility or at the request of a primary carer, relative or friend.

The Division also sets out the steps to be taken following the involuntary detention of a person in a mental health facility, including the carrying out of medical examinations and the notification of friends and relatives of the person's detention. A person who is found, after those steps are taken, to be a mentally ill person (an *assessable person*) must be the subject of a Magistrate's inquiry (a *mental health inquiry*). A person who is found, after those steps are taken, to be a mentally disordered person must not be detained for a period of more than 3 days (not including weekends and public holidays). A person who is not found, after those steps are taken, by 2 medical practitioners to be either a mentally ill person or a mentally disordered person, must be released. The Division provides for further limited detention to enable police to take action in relation to certain persons.

Division 3 Continuing detention in mental health facilities

The Division (proposed sections 34–45) provides for the procedures and purpose of mental health inquiries to determine whether an assessable person is, on the balance of probabilities, a mentally ill person and the course of action to be taken in respect of the person. On a finding that a person is a mentally ill person, the Magistrate must, if of the opinion that it is appropriate to do so, order that the person be detained in a mental health facility as an involuntary patient for a period not exceeding 3 months. If not of that opinion, the Magistrate may order the person's discharge or make a community treatment order for the person.

The Division also deals with the periodic review (every 3 months) by the Mental Health Review Tribunal (the *Tribunal*) of persons who are found at an inquiry to be mentally ill persons requiring detention. The Tribunal must order the discharge of a patient on a review if it does not determine that the patient is a mentally ill person and that no other care of a less restrictive kind is appropriate and reasonably available to the person. An involuntary patient must be examined by an authorised medical officer at least once every 3 months.

The Division sets out other circumstances in which an involuntary patient may cease to be involuntarily detained in a mental health facility, including on re-classification as a voluntary patient, when a community treatment order is made and by discharge after an application by the patient or the primary carer or another person or if a person is absent from a facility for more than 12 months.

There is an appeal to the Tribunal against a refusal of or failure to determine an application for discharge.

Division 4 Leave of absence from mental health facilities

The Division (proposed sections 46–49) provides for leave of absence from detention in a mental health facility to be granted to patients and detained persons and for the apprehension of patients or persons who fail to return after leave of absence expires or to comply with a condition of leave of absence.

Part 3 Involuntary treatment in the community

The Part establishes a scheme for the mandatory treatment of persons outside mental health facilities under community treatment orders.

Division 1 Applications for and making of community treatment orders

The Division (proposed sections 50–56) enables the Tribunal, on application or on its own motion, or a Magistrate holding a mental health inquiry, to make a community treatment order in respect of a person (the *affected person*). The Division specifies that such an order may not be made in respect of a person unless specified criteria relating to the person's previous history and treatment are met, a treatment plan is proposed by a declared mental health facility and the Tribunal or Magistrate is satisfied that the facility is capable of implementing it. The Division also specifies requirements for treatment plans and provides for the form and duration of community treatment orders. A community treatment order may not last for more than 12 months.

Division 2 Operation of community treatment orders

The Division (proposed sections 57–64) provides for the operation and enforcement of community treatment orders. An affected person is required to attend at a specified place to receive treatment by a specified mental health facility. Medication may be administered to an affected person without consent for the purposes of an order. A person who breaches an order may be taken to the relevant mental health facility or another mental health facility and may be given treatment there or assessed for involuntary admission to a mental health facility. A person who refuses treatment after being taken to the supervising mental health facility may be taken to another mental health facility. A person taken to such a mental health facility may be detained there for the duration of the community treatment order but must be released in specified circumstances. The Tribunal is to review the case of an affected person detained after breach of a community treatment order every 3 months to determine whether the person is a mentally ill person for whom no other care is appropriate and reasonably available.

Division 3 Revocation, variation and review of community treatment orders

The Division (proposed sections 65–67) provides for the variation and revocation of community treatment orders and for appeals against community treatment orders.

Chapter 4 Care and treatment

Part 1 Rights of patients or detained persons and primary carers

Division 1 General

The Division (proposed sections 68–72) sets out general principles for the care and treatment of people with a mental illness or mental disorder, including the principle that people with a mental illness or a mental disorder should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given. The Division makes it an offence for an authorised medical officer or an employee at a mental health facility wilfully to strike, wound, ill-treat or neglect a patient or detained person. It also requires interpreters to be provided for medical examinations if a person cannot communicate adequately in English. The Division also provides for primary carers under the proposed Act, including the process for nominating primary carers.

Division 2 Notification and information sharing

The Division (proposed sections 73–79) contains provisions setting out the rights of patients and persons detained in mental health facilities, and their primary carers, to be notified of events affecting those patients and persons and of their rights under the proposed Act. The rights include the right to be informed about medication and medication dosages, to be given an oral and written explanation of rights under the Act, to be notified about mental health inquiries and appeal rights and to be consulted in discharge planning. In addition, a primary carer will have the right to be notified of a person's initial detention and other events affecting the person, including absences, transfer to other facilities, medical treatments and re-classification.

Division 3 Transfer of patients

The Division (proposed sections 80 and 81) enables the transfer of patients and persons to and from mental health facilities and other facilities. It also sets out the persons who may take or transfer a person to or from a mental health facility, including members of staff of the NSW Health Service, ambulance officers and police officers, and confers powers on them to use reasonable force and to restrain persons in ways that are reasonably necessary in the circumstances. A search power is also conferred on these persons.

Part 2 Mental health treatments

Division 1 Preliminary

The Division (proposed section 82) defines expressions used in the proposed Part.

Division 2 General provisions about mental health treatment

The Division (proposed sections 83–86) prohibits the administration of deep sleep therapy, insulin coma therapy, psychosurgery and other prescribed operations or treatments and provides for the regulation of the administration of drugs. It also authorises an authorised medical officer (subject to the proposed Act) to treat patients or persons detained in mental health facilities. It will be an offence for a medical practitioner to administer excessive or inappropriate dosages of drugs in relation to a mental illness or mental condition. An internal review system must be established to monitor and review the prescription of drugs in a mental health facility.

Division 3 Electro convulsive therapy

The Division (proposed sections 87–97) regulates the administration of electro convulsive therapy. Any such treatment must be given in accordance with the Division, which specifies that it must be given by a medical practitioner in the presence of at least 1 other medical practitioner. Of the medical practitioners, 1 must be experienced in electro convulsive therapy and 1 must be experienced in anaesthesia. The Division specifies the circumstances in which such treatment may be administered without consent to an involuntary patient, after an inquiry by the Tribunal, and a finding that informed consent has been given or that the treatment is a reasonable and proper treatment and is necessary and desirable for the safety and welfare of the patient. For a person other than an involuntary patient, the Division requires treatment to be given only after informed consent is given and a certificate is given by at least 2 medical practitioners (including at least 1 psychiatrist) that the treatment is reasonable and proper treatment to be administered to the person and necessary or desirable for the person's safety or welfare. The Tribunal may determine whether informed consent has been given. A determination of the Tribunal has effect for 6 months unless another period is specified in the determination. A register of treatments is to be kept in relation to each place at which electro convulsive therapy is administered.

Part 3 Other medical treatments

The Part (proposed sections 98–104) regulates the performance of certain surgical operations on persons involuntarily detained in a mental health facility and the performance of special medical treatment (including procedures to render a person infertile) on such persons. The Director-General may, in the case of an emergency, consent to the performance of a surgical operation on a patient where the patient is incapable of giving, or fails or refuses to give, consent. A medical practitioner may carry out special medical treatment on a patient, in case of an emergency. Provision is made, in other cases, for an authorised medical officer of a mental health facility to apply, after the giving of notice to certain persons, to the Director-General or the Tribunal for consent to perform surgical operations or for consent to carry out special medical treatment in relation to persons involuntarily detained in a mental health facility.

Chapter 5 Administration

Part 1 Administrative objectives and functions

The Part (proposed sections 105–108) sets out the objectives of the New South Wales public health system in relation to mental health services as well as the general functions of the Director-General under the proposed Act. It also contains other administrative provisions, including the Director-General's delegation power and the requirement for the Director-General to prepare an annual report for the Minister about mental health services and other matters.

Part 2 Mental health facilities

Division 1 Declared mental health facilities

The Division (proposed sections 109–114) provides for the establishment of declared mental health facilities under the proposed Act and the appointment of medical superintendents and deputy medical superintendents of those facilities. It also provides for the appointment of directors and deputy directors of community treatment and psychiatric case managers for the purposes of community treatment orders.

Division 2 Private mental health facilities

The Division (proposed sections 115–127) provides for the licensing of private mental health facilities, for medical supervision of those facilities and for the appointment of medical superintendents and deputy medical superintendents to those facilities.

Part 3 Official visitors and accredited persons

The Part (proposed sections 128–136) provides for the appointment and functions of official visitors and accredited persons. Official visitors and a Principal official visitor may be appointed by the Minister to inspect mental health facilities and make inquiries with regard to the care, treatment and control of patients. Among other functions, the Principal official visitor is to oversee the official visitor program and to act as an advocate to the Minister for consumers of mental health care. The Part sets out the inspection obligations of official visitors and the requirement for medical superintendents and administrators to facilitate the inspection of premises and interviews of patients or detained persons and to produce relevant registers and other records.

The Part also provides for the appointment of accredited persons by the Director-General.

Part 4 Inspection powers

The Part (proposed sections 137–139) enables the Director-General to inquire into the administration, management and services of a mental health facility and, for that purpose, to cause inspections of facilities to be carried out. The Part sets out the powers of the authorised officers who carry out the inspections to require persons to attend and give evidence or produce books and other records and contains a provision protecting a person who gives self-incriminating evidence.

Chapter 6 Mental Health Review Tribunal

Part 1 The Tribunal

The Part (proposed sections 140–148) constitutes the Mental Health Review Tribunal and makes general provision in relation to the Tribunal, including provision for the qualifications of members to be appointed to the Tribunal and the appointment of a Registrar and staff. The Part also gives proceedings of the Tribunal protection under the *Defamation Act 2005* and enables the President of the Tribunal to delegate his or her functions.

Part 2 Procedures of the Tribunal

The Part (proposed sections 149–162) sets out matters relating to the composition of the Tribunal when exercising its functions and to procedure at meetings of the Tribunal. The Part prohibits a member from determining that a person is a mentally ill person or a mentally disordered person unless so satisfied on the balance of probabilities. Unless the Tribunal otherwise orders, the Tribunal's proceedings are to be open to the public. The Part contains provisions relating to rights of appearance, adjournments, inspection of medical records, the production of evidence for the Tribunal, the use of interpreters and recording proceedings. Regulations may be made for or with respect to various aspects of Tribunal proceedings, including the form of representations by victims. It will be an offence to refuse, neglect or for any reason fail to obey or comply with an order, direction, decision or determination of the Tribunal. It will also be an offence to publish or broadcast the name of persons involved in Tribunal reviews and other proceedings.

Chapter 7 Jurisdiction of Supreme Court

The Chapter (proposed sections 163–168) provides for the making of appeals to the Supreme Court from determinations of the Tribunal or if the Tribunal refuses or fails to make a determination. The Chapter also provides for the appointment of assessors having appropriate qualifications and experience to sit with the Court on the hearing of appeals in order to assist in, but not to adjudicate on, any matter relevant to the determination of the appeal. Jurisdiction is also conferred on the Court to order a person who is detained in a mental health facility to be brought before the Court for examination and to order the person's release from the facility (or transfer, in the case of a forensic patient) if the Court is not satisfied that the person meets the criteria for involuntary detention in a mental health facility.

Chapter 8 Interstate application of mental health laws

Part 1 Preliminary

The Part (proposed sections 169–173) sets out the objects of the proposed Chapter and defines expressions used in the proposed Chapter. It also enables the Minister to enter into agreements with Ministers of other States and Territories to participate in reciprocal arrangements relating to the transfer, detention, treatment and apprehension of mental health patients and the interstate operation and enforcement of community treatment orders. It also provides for the declaration of interstate mental health laws for the purposes of the proposed Chapter. The remainder of the proposed Part deals with the actions that may be taken under any such reciprocal arrangements.

Part 2 Transfer of patients and persons

Division 1 Transfer of persons from this State

The Division (proposed sections 174–176) enables people who may be taken to and detained in a mental health facility in this State to be taken to mental health facilities in other States or Territories by people authorised to do so in this State or the other State or Territory concerned. The Division also provides for the transfer of patients from this State to other States or Territories.

Division 2 Transfer of persons to this State

The Division (proposed sections 177–180) enables people who may be taken to and detained in a mental health facility in another State or Territory to be taken to mental health facilities in this State by people authorised to do so in this State or the other State or Territory concerned. The Division also provides for the transfer of interstate involuntary patients to mental health facilities in this State.

Part 3 Community treatment orders and other orders

The Part (proposed sections 181–184) enables community treatment orders to be made in this State for interstate residents who are to be treated in this State and provides for the implementation, in this State, of community treatment orders made in other States or Territories.

Part 4 Apprehension of persons absent from mental health facility or in breach of orders

The Part (proposed sections 185–187) enables interstate warrants and orders to apprehend interstate mental health patients to be recognised and enforced in this State and provides for the detention of patients apprehended under such warrants or orders in mental health facilities in this State.

Chapter 9 Miscellaneous

The Chapter (proposed sections 188–201) contains miscellaneous provisions, including provisions relating to the disclosure of information, exclusion from liability of police officers, health care professionals and ambulance officers, service of documents, approved forms, the role of the objects provisions and regulation-making powers. The Chapter also provides for a 5-year review of the Act and repeals the *Mental Health Act 1990*.

Schedule 1 Medical certificate as to examination or observation of person

The Schedule contains the form of the mental health certificate for use for the detention of a person in a declared mental health facility.

Schedule 2 Mental health inquiries

The Schedule contains procedural provisions relating to the conduct of mental health inquiries by Magistrates to determine whether persons should be detained in mental health facilities as involuntary patients.

Schedule 3 Statement of rights

The Schedule contains the statement of rights which is to be given to a person as soon as practicable after a person is taken to and detained in a mental health facility, or it is decided to take steps to detain a person already in a facility.

Schedule 4 Provisions relating to Principal official visitor and official visitors

The Schedule contains provisions relating to the remuneration and tenure of office of the Principal official visitor and official visitors.

Schedule 5 Provisions relating to members of Tribunal

The Schedule contains provisions relating to the members of the Tribunal.

Schedule 6 Savings, transitional and other provisions

The Schedule contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 7 Amendment of other Acts

The Schedule makes consequential amendments to other Acts. The Schedule inserts into the *Mental Health (Criminal Procedure) Act 1990*, with only consequential changes, the provisions of the former *Mental Health Act 1990* relating to the review, detention, care, treatment and release of forensic patients.