

MENTAL HEALTH BILL 1990*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Mental Health (Criminal Procedure) Bill 1990 and the Miscellaneous Acts (Mental Health) Repeal and Amendment Bill 1990 are cognate with this 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 partly uncommenced Mental Health Act 1983, as proposed to be amended by the Steering Committee on Mental Health (the Deveson Committee).

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

CHAPTER 1 - INTRODUCTORY

Chapter 1 (cll. 1-3) contains provisions relating to the citation and commencement of the proposed Act. Instead of a section containing definitions, a list of defined terms used in the Act is contained in proposed section 3. The definitions are contained in the Dictionary set out in proposed Schedule 1.

CHAPTER 2 - OBJECTS ETC.

Chapter 2 (cll. 4-7) sets out the objects of the proposed Act in relation to the care, treatment and control of mentally ill persons and mentally disordered persons. It also sets out the objectives of the Department of Health in relation to mental health services as well as the general functions of the Director-General of the Department of Health under the proposed Act.

CHAPTER 3 - MENTALLY ILL AND MENTALLY DISORDERED PERSONS

Chapter 3 (cll. 8-11) sets out the criteria which a person who is suffering from mental illness or who is mentally disordered must satisfy before being considered to

* Amended in committee - see table at end of volume.

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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.

CHAPTER 4 - ADMISSION TO, AND CARE IN, HOSPITALS

PART 1 - VOLUNTARY ADMISSION TO HOSPITALS

Part 1 (cll. 12-19) sets out the circumstances in which a person may be admitted voluntarily as an informal patient under the proposed Act. A medical superintendent of a hospital or a medical officer nominated by the medical superintendent may refuse to admit a person as an informal patient and may discharge a person as an informal patient. A right of appeal is provided to the medical Superintendent against any such decision by a medical officer nominated by the medical superintendent.

PART 2 - INVOLUNTARY ADMISSION TO HOSPITALS

Division 1 - Admission to and detention in hospitals

Division 1 (cll. 20-37) sets out the circumstances in which a person may be brought to, and detained involuntarily in, a hospital 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 hospital on the certificate of a medical practitioner, at the request of a relative or friend, on the information of a member of the Police Force, on an order of a court, on the information of a welfare officer or 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. In general, a person, even though mentally ill or mentally disordered, may not be detained under the Part unless the medical superintendent is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the person.

The Division also sets out the procedures to be observed following the involuntary detention of a person in a hospital, including the carrying out of medical examinations and the notification of friends and relatives of the person's detention.

Division 2 - Inquiries relating to mentally ill persons

Division 2 (cll. 38-54) requires a person who is detained under Division 1, and who has been found on the carrying out of examinations under that Division to be a mentally ill person, to be brought before a Magistrate so that an inquiry may be held to determine whether, on the balance of probabilities, the person is a mentally ill person and the course of action to be taken in respect of the person. The Division sets out the procedures for the holding of inquiries by Magistrates and the findings which may be made. 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 hospital as a temporary patient for a period not exceeding 3 months.

Division 3 - Temporary patients and continued treatment patients

Division 3 (cll. 55-59) deals with the classification, treatment and periodic review by the Mental Health Review Tribunal of persons who are found at an inquiry to be

mentally ill persons requiring detention. The Tribunal may, on such a review, classify a temporary patient as a continued treatment patient.

PART 3 - REVIEW, DISCHARGE, LEAVE AND TRANSFER OF PERSONS (OTHER THAN FORENSIC PATIENTS) IN HOSPITALS

Part 3 (cll. 60-78) provides for the regular medical examination of patients (other than forensic patients) as well as other matters relating to reclassification, leave of absence and the transfer of such patients. The Mental Health Review Tribunal must review each involuntary patient's case at least once every 6 months to determine whether continued detention is appropriate. The Part sets out the circumstances in which patients may be discharged and provides a right of appeal to the Tribunal against a medical superintendent's refusal to discharge a patient. The Part also provides for leave of absence 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.

CHAPTER 5 - FORENSIC PATIENTS

PART 1 - RELATIONSHIP OF CHAPTER TO OTHER LEGISLATION

Part 1 (cl. 79) indicates that the Mental Health (Criminal Procedure) Act 1990 contains provisions relating to procedures in criminal proceedings relating to persons affected by a mental condition and that some functions of the Tribunal relating to such persons are contained in the proposed Chapter.

PART 2 - REVIEW OF FORENSIC PATIENTS

Part 2 (cll. 80-89) provides for the periodic review by the Mental Health Review Tribunal of forensic patients and persons to be transferred to hospitals from prisons, (A forensic patient is a person detained in a hospital, prison or other place pursuant to an order under proposed section 10 (3) (c), B 7 (3), 25, 27 or 39 of the Mental Health (Criminal Procedure) Act 1990 or section 7 (4) of the Criminal Appeal Act 1912, a person detained in a hospital pending the person's committal for trial for an offence or pending the person's trial for an offence or a person who has been transferred to a hospital while serving a sentence of imprisonment and who has not been classified by the Tribunal as a continued treatment patient.) The Tribunal may make recommendations as to the detention, care, treatment or release of a patient or person but may not recommend the release of a person remanded in custody under proposed section 10 (3) (c) of the Mental Health (Criminal Procedure) Act 1990. Any recommendation for release (other than in relation to a person detained in strict custody) must be notified to the Attorney General and may not take effect if the Attorney General objects. The Tribunal may also classify a forensic patient as a continued treatment patient before the patient ceases to be a forensic patient.

PART 3 - OTHER PROVISIONS RELATING TO FORENSIC PATIENTS

Part 3 (cll. 90-113) sets out the circumstances in which leave of absence may be granted to a forensic patient and provides for the apprehension of patients who fail to return after leave of absence expires or to comply with a condition of leave of absence. The Part provides for the transfer of persons from prison to hospital, from

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hospital to prison and between hospitals. It also sets out the circumstances when persons cease to be forensic patients and provides for the retaking of escaped forensic patients.

CHAPTER 6 - CARE AND TREATMENT OUTSIDE HOSPITALS

Chapter 6 establishes a scheme for the treatment of persons outside hospitals under community counselling orders or community treatment orders. The scheme arose out of recommendations made by the Deveson Committee.

PART 11 - HEALTH CARE AGENCIES

Part 1 (cll. 114-117) provides for the declaration of health services as health care agencies and the appointment of persons as Directors and Deputy Directors of health care agencies and as psychiatric case managers.

PART 2 - COMMUNITY COUNSELLING ORDERS

Part 2 (cll. 118-130) enables the Tribunal, on the application of the person concerned or any other authorised applicant, or a Magistrate holding an inquiry under proposed section 41, to make a community counselling order in respect of a person. The Part sets out the procedures for hearing an application for such an order and specifies that an order may not be made unless the person to be subject to it (the affected person) is likely to become a mentally ill person within 3 months and other specified criteria relating to the person's previous history and treatment are met.

A person subject to an order is required to attend at a specified place to receive treatment by a specified health care agency. A community counselling order may not last for more than 6 months. A person who breaches an order may be required to attend the relevant health care agency for counselling and administration of medication or assessment for the purposes of involuntary admission to a hospital and may be apprehended and brought to the health care agency for those purposes.

PART 3 - COMMUNITY TREATMENT ORDERS

Part 3 (cll. 131-143) enables the Tribunal, on the application of a medical superintendent or on its own motion, or a Magistrate holding an inquiry under proposed section 41, to make a community treatment order in respect of a person. The Part 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 person subject to an order is required to attend at a specified place to receive treatment by a specified health care agency. A community treatment order may not last for more than 3 months. A person who breaches an order may be taken to the relevant health care agency or a hospital and may be given treatment there or assessed for involuntary admission to a hospital. A person who refuses treatment after being taken to a health care agency may be taken to a hospital. A person taken to a hospital may be detained there for the duration of the community treatment order but must be released in specified circumstances.

PART 4 - GENERAL

Part 4 (cll. 144-151) contains general provisions relating to the administration of medication to affected persons, the revocation or variation of community counselling orders and community treatment orders and appeals to the Mental Health Review Tribunal in respect of orders made by Magistrates.

CHAPTER 7 - MEDICAL OR THERAPEUTIC TREATMENTS RELATING TO MENTAL ILLNESS OR GIVEN TO PATIENTS

PART 1 - TREATMENTS FOR MENTAL ILLNESS

Division 1 - Psychosurgery

Division 1 (cll. 152–178) establishes a Psychosurgery Review Board to regulate the performance of psychosurgery on patients and to advance research into psychosurgery. The Division provides that a person must not perform psychosurgery on a patient who is capable of giving a free, voluntary and informed consent, except where the patient has given that consent and with the consent of the Board. The Division also provides that a person must not perform psychosurgery on a patient, except in accordance with a consent of the Board, and procedures are specified in the Division to enable the granting of that consent. If the Board is not satisfied that a patient is capable of giving a free, voluntary and informed consent, it may state a case for the determination of the Supreme Court as to whether the Court should give that consent on behalf of the patient. If a patient who is capable of giving a free, voluntary and informed consent fails or refuses to give that consent, the Board is directed to refuse consent to psychosurgery on the patient. The Board is also directed to refuse consent where it is not satisfied as to the appropriateness of the treatment and on other grounds.

Division 2 - Electro convulsive therapy and certain prescribed treatments

Division 2 (cll. 179–196) regulates the administration of electro convulsive therapy and certain other prescribed medical or therapeutic treatments. The Division specifies the circumstances in which such treatment may be administered without consent to an involuntary patient (in emergencies or after an inquiry by the Tribunal) and otherwise requires treatment to be given only after informed consent is given. Any such treatment must be given in accordance with the Division.

Division 3 - Prohibited treatments

Division 3 (cll. 197-199) prohibits the administration of deep sleep therapy, insulin coma therapy or certain other prescribed operations or treatments and provides for the regulation of the administration of drugs.

PART 2 - TREATMENTS CARRIED OUT ON PATIENTS

Part 2 (cll. 200-207) regulates the performance of certain surgical operations on persons involuntarily detained in a hospital and the performance of "special medical treatment" (including procedures to render a person infertile) on patients.

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Certain prescribed persons may, in case of 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 emergency. Provision is made, in other cases, for the medical superintendent of a hospital to apply, after the giving of notice to certain persons, to the Tribunal or an authorised officer for consent to perform surgical operations or to the Tribunal for consent to carry out special medical treatment.

CHAPTER 8 - ESTABLISHMENT AND ADMINISTRATION OF HOSPITALS

PART 1 - HOSPITALS

Division 1 - Hospitals other than authorised hospitals

Division 1 (cll. 208-210) provides for the establishment of hospitals (other than authorised hospitals) under the proposed Act and the appointment of medical superintendents and deputy medical superintendents to those hospitals.

Division 2 - Authorised hospitals

Division 2 (cll. 211–225) provides for the licensing of persons, including operators of private hospitals, to keep authorised hospitals for the admission, care and treatment of patients, for medical supervision of those hospitals and for the appointment of medical superintendents and deputy medical superintendents to those hospitals.

PART 2 - OFFICIAL VISITORS AND OTHER OFFICERS

Part 2 (cll. 226-243) provides for the appointment and functions of official visitors, authorised officers and welfare officers. Official visitors and a Principal official visitor may be appointed by the Minister to inspect hospitals and health care agencies and make inquiries with regard to the care, treatment and control of patients. Authorised officers may be appointed by the Director-General of the Department of Health to visit and inspect hospitals. Welfare officers may be appointed by the Director-General to carry out specified functions relating to patients.

PART 3 - PATIENTS FUNDS AND ACCOUNTS

Part 3 (cll. 244–251) provides for the establishment and administration of certain funds and accounts, including Patients Trust Funds into which money held on behalf of patients is to be paid and Patients Amenities Accounts into which amounts received to provide goods, services and amenities for patients generally are to be paid. The Part also enables the collective investment of money standing to the credit of patients' accounts and for the distribution of income from the investment through an Interest Account.

CHAPTER 9 - MENTAL HEALTH REVIEW TRIBUNAL

PART 1 - THE TRIBUNAL

Part 1 (c. 252-263) constitutes the Mental Health Review Tribunal and makes general provision in relation to the Tribunal. The Part also gives proceedings of the Tribunal protection under the Defamation Act 1974 and enables the President of the Tribunal to delegate his or her functions.

PART 2 - PROCEEDINGS OF THE TRIBUNAL

Part 2 (c. 264-280) sets out matters relating to the composition of the Mental Health Review Tribunal when dealing with particular patients 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. Provision is made for the use of interpreters in Tribunal proceedings and for the recording of Tribunal decisions.

CHAPTER 10 - JURISDICTION OF SUPREME COURT

Chapter 10 (c. 281 -286) provides for the making of appeals to the Supreme Court from determinations of the Mental Health Review Tribunal or from the refusal or failure of the Tribunal to make a determination. The Chapter 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.

CHAPTER 11 - MISCELLANEOUS

Chapter 11 (c. 287-303) contains miscellaneous provisions, including provisions relating to the legal representation of mentally ill persons, the disclosure of information, the withholding of correspondence of patients or persons detained in hospitals, information to be provided to discharged patients, service of notices, annual reports under the proposed Act and regulation-making powers. The Chapter also prohibits the making of false or misleading statements by medical practitioners in certificates and the ill-treatment of patients.

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE ACT

Schedule 1 contains a dictionary of terms used in the proposed Act.

SCHEDULE 2 - MEDICAL CERTIFICATE AS TO EXAMINATION OR OBSERVATION OF PERSON

Schedule 2 contains the form of certificate for use for the detention of a person in a hospital.

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SCHEDULE 3 - MEDICAL CERTIFICATE AS TO EXAMINATION OF PRISONER

Schedule 3 contains the form of certificate for use on examination of a prisoner for the purpose of ascertaining whether the prisoner should be transferred from a prison to a hospital.

SCHEDULE 4 - CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD

Schedule 4 contains provisions relating to the constitution, membership and meetings of the Psychosurgery Review Board.

SCHEDULE 5 - PROVISIONS RELATING TO PRINCIPAL OFFICIAL VISITOR AND OFFICIAL VISITORS

Schedule 5 contains provisions relating to the remuneration and tenure of office of the Principal official visitor and official visitors.

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF THE TRIBUNAL

Schedule 6 contains provisions relating to the members of the Tribunal.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Schedule 7 contains savings, transitional and other provisions.
