



New South Wales

Health Legislation Further Amendment Bill 2010

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Mental Health Act 2007* with respect to the review of involuntary patients, the classification of involuntary patients as voluntary patients, the making of community treatment orders with respect to forensic patients, the service of notices on persons who breach community treatment orders, the circumstances in which electro convulsive therapy may be used and the composition of the Mental Health Review Tribunal,
- (b) to amend the *Mental Health (Forensic Provisions) Act 1990* with respect to the making of community treatment orders in relation to forensic patients,
- (c) to amend the *Health Records and Information Privacy Act 2002* to provide that a healthcare identifier within the meaning of the *Healthcare Identifiers Act 2010* of the Commonwealth is health information and to permit regulations to be made with respect to healthcare identifiers.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Mental Health Act 2007 No 8

Schedule 1 [1] permits the Mental Health Review Tribunal (*the Tribunal*) to review the case of an involuntary patient at any time. It also requires an authorised medical officer to cause an involuntary patient to be brought before the Tribunal at such times as may be required by the Tribunal for the purposes of any such review.

Schedule 1 [2] permits the Tribunal to classify an involuntary patient as a voluntary patient when conducting a review of the patient. **Schedule 1 [3]** makes a consequential amendment.

Schedule 1 [4] provides that the Tribunal, when determining whether to make a community treatment order in respect of a forensic patient, is not required to consider if the person has a previous history of refusing to accept appropriate treatment. Instead, it must be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted.

Schedule 1 [5] clarifies the steps that must be taken when notifying a person that he or she is in breach of a community treatment order and provides for notification to be given by post in circumstances where it is not reasonably practicable to hand the notice directly to the person. **Schedule 1 [9]** includes a transitional provision that enables the proposed notification requirements to be used in respect of a breach of a community treatment order that occurs before the proposed amendment commences.

Schedule 1 [6] corrects a typographical error in the formulation of a test to be applied by the Tribunal in making an electro convulsive therapy determination so that it is consistent with the formulation of the test in related provisions of the *Mental Health Act 2007* and in the corresponding provisions of the former *Mental Health Act 1990*.

Schedule 1 [7] removes a prohibition on the President of the Tribunal, when constituting the Tribunal, nominating members (other than psychiatrists) who are Australian lawyers. The President may now nominate a member whom the Governor considers to have suitable qualifications or experience.

Schedule 1 [8] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Mental Health (Forensic Provisions) Act 1990 No 10

Schedule 2 [1] provides that the Tribunal may make community treatment orders in relation to all forensic patients rather than certain classes of forensic patients as is the case at present.

Schedule 2 [2] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Health Records and Information Privacy Act 2002 No 71

Schedule 3 [1] and [2] provide that a healthcare identifier within the meaning of the *Healthcare Identifiers Act 2010* of the Commonwealth is health information for the purposes of the *Health Records and Information Privacy Act 2002*.

Schedule 3 [3] provides that regulations may be made in relation to healthcare identifiers and may specify the circumstances in which a person may or may not use or disclose a healthcare identifier. A person who uses or discloses a healthcare identifier in contravention of any such regulation commits an offence (maximum penalty \$66,000 in the case of a corporation, or imprisonment for 2 years or \$13,200, or both, in any other case).

Schedule 3 [4] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

First print

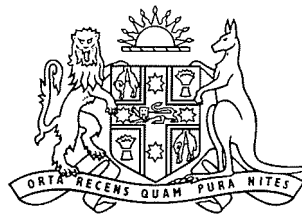


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New South Wales

Health Legislation Further Amendment Bill 2010

No. , 2010

A Bill for

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Health Legislation Further Amendment Act 2010</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Mental Health Act 2007	1
	No 8	2
[1] Section 37 Reviews of involuntary patients by Tribunal		3
Omit section 37 (2). Insert instead:		4
(1A) The Tribunal may review the case of an involuntary patient at such other times as it sees fit.		5 6
(2) An authorised medical officer must cause an involuntary patient to be brought before the Tribunal:		7 8
(a) as soon as practicable before the end of the initial period of detention, if it appears to the officer that the person should continue to be detained, and		9 10 11
(b) at such other times as may be required by the Tribunal for the purposes of any review under this section.		12 13
[2] Section 40 Re-classification of involuntary patients as voluntary patients		14
Omit section 40 (1). Insert instead:		15
(1) An involuntary patient may be classified as a voluntary patient of the mental health facility in which the patient is detained:		16 17
(a) by an authorised medical officer at any time, or		18
(b) by the Tribunal when conducting a review of the patient.		19
[3] Section 40 (2) (a)		20
Insert “or Tribunal” after “authorised medical officer”.		21
[4] Section 53 Determination of applications for community treatment orders		22 23
Insert “a forensic patient or” after “12 months been” in section 53 (3A).		24
[5] Section 58 Breach of community treatment order		25
Insert after section 58 (4):		26
(5) For the purposes of subsection (3), the director causes a person to be given a breach notice if the director ensures that:		27 28
(a) the notice is handed directly to the person, or		29
(b) if it is not reasonably practicable to hand the notice directly to the person, the notice is posted to the last known address of the person.		30 31 32

[6] Section 96 Purpose and findings of ECT inquiries	1
Omit “necessary and desirable” from section 96 (3) (b) (ii).	2
Insert instead “necessary or desirable”.	3
[7] Section 150 Composition of Tribunal	4
Omit section 150 (3) (b). Insert instead:	5
(b) a member referred to in section 141 (2) (c).	6
[8] Schedule 6 Savings, transitional and other provisions	7
Insert at the end of clause 1 (1):	8
<i>Health Legislation Further Amendment Act 2010</i>	9
[9] Schedule 6	10
Insert after Part 4:	11
Part 5 Provisions consequent on enactment of Health Legislation Further Amendment Act 2010	12 13 14
22 Service of notices	15
Section 58 as amended by the <i>Health Legislation Further Amendment Act 2010</i> extends to a refusal or failure to comply with a community treatment order that occurred before the commencement of that amendment.	16 17 18 19

Schedule 2	Amendment of Mental Health (Forensic Provisions) Act 1990 No 10	1
		2
[1]	Section 67 Community treatment orders	3
	Omit section 67 (1) (a). Insert instead:	4
	(a) a forensic patient, or	5
[2]	Schedule 1 Savings and transitional provisions	6
	Insert at the end of clause 1A (1):	7
	<i>Health Legislation Further Amendment Act 2010</i>	8

Schedule 3	Amendment of Health Records and Information Privacy Act 2002 No 71	1
		2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4 (1):	4
	<i>healthcare identifier</i> has the same meaning as it has in the	5
	<i>Healthcare Identifiers Act 2010</i> of the Commonwealth.	6
[2] Section 6 Definition of “health information”		7
	Insert at the end of section 6 (d):	8
	or	9
	(e) healthcare identifiers,	10
[3] Section 75A		11
	Insert after section 75:	12
75A Regulations with respect to healthcare identifiers		13
(1)	Without limiting section 75, regulations may be made for or with respect to healthcare identifiers.	14 15
(2)	In particular, the regulations may specify the circumstances in which a person may or may not use or disclose a healthcare identifier.	16 17 18
(3)	A person who uses or discloses a healthcare identifier in contravention of a regulation made under subsection (2) is guilty of an offence.	19 20 21
	Maximum penalty:	22
(a)	600 penalty units in the case of a body corporate, or	23
(b)	120 penalty units or imprisonment for 2 years, or both, in any other case.	24 25

[4] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Health Legislation Further Amendment Act 2010

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