



MESSAGE No. 56

Mr Speaker

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Mental Health Bill 2013* subject to the amendments contained in the Schedule annexed; in which amendments the Legislative Council desires the concurrence of the Legislative Assembly.

A handwritten signature in black ink, consisting of several large, sweeping loops and a long horizontal stroke at the bottom.

Hon Barry House
President of the Legislative Council

Legislative Council Chamber
Perth, 14 October 2014

Schedule indicating the amendments made by the Legislative Council in the Mental Health Bill 2013

No. 1

Clause 4, page 4, lines 16 and 17 — To delete “mental health practitioner;” and insert —

other health professional;

No. 2

Clause 4, page 5, after line 26 — To insert —

health professional means —

- (a) a medical practitioner; or
- (b) a nurse; or
- (c) an occupational therapist; or
- (d) a psychologist; or
- (e) a social worker; or
- (f) in relation to a person who is of Aboriginal or Torres Strait Islander descent —
 - (i) a health professional listed in paragraphs (a) to (e); or
 - (ii) an Aboriginal or Torres Strait Islander mental health worker;

No. 3

Clause 4, page 6, lines 7 to 11 — To delete the lines and insert —

involuntary patient has the meaning given in section 21(1);

involuntary treatment order has the meaning given in section 21(2);

No. 4

Clause 20, page 20, line 22 — To delete “medical practitioner or other”.

No. 5

Clause 28, page 25, line 30 — To delete “referral” and insert —

order

No. 6

Clause 28, page 25, line 31 — To delete “, because of the person’s mental or physical condition,”.

No. 7

Clause 28, page 26, lines 19 and 20 — To delete “, because of the person’s mental or physical condition,”.

No. 8

Clause 28, page 27, lines 10 and 11 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

No. 9

Clause 29, page 28, line 6 — To delete “because of the person’s mental or physical condition,”.

No. 10

Clause 34, page 32, line 7 — To delete “the inpatient’s psychiatrist” and insert —

a health professional who is currently providing the inpatient with treatment

No. 11

Clause 48, page 40, lines 2 to 14 — To delete the lines.

No. 12

Clause 48, page 41, line 1 — To delete “prescribed”.

No. 13

Clause 52, page 42, line 21 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

No. 14

Clause 53, page 43, line 17 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

No. 15

Clause 58, page 47, line 9 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

No. 16

Clause 59, page 48, line 20 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

No. 17

Clause 62, page 50, lines 24 and 25 — To delete “, because of the person’s mental or physical condition,”.

No. 18

Clause 62, page 51, lines 6 and 7 — To delete “, because of the person’s mental or physical condition,”.

No. 19

Clause 62, page 51, line 25 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

No. 20

Clause 63, page 52, line 16 — To delete “because of the person’s mental or physical condition,”.

No. 21

Clause 70, page 56, line 14 — To delete “the person’s psychiatrist” and insert —

a health professional who is currently providing the person with treatment

No. 22

Clause 79, page 60, lines 17 to 29 — To delete the lines.

No. 23

Clause 79, page 61, line 14 — To delete “prescribed”.

No. 24

Clause 126, page 95, lines 22 to 28 — To delete the lines and insert —

- (c) the supervising psychiatrist reasonably believes that, despite the steps that have been taken, the non-compliance is continuing and that, if the non-compliance continues, there is —
 - (i) a significant risk to the health or safety of the involuntary community patient or to the safety of another person; or
 - (ii) a significant risk of serious harm to the involuntary community patient or to another person; or
 - (iii) a significant risk of the involuntary community patient suffering serious physical or mental deterioration.

No. 25

Clause 129, page 98, after line 4 — To insert —

- (5) The making of a transport order under subsection (2) is an event to which Part 9 applies and the practitioner who makes the order is the person responsible under that Part for notification of that event.

No. 26

Clause 133, page 102, lines 3 and 4 — To delete “because of the involuntary community patient’s mental or physical condition,”.

No. 27

Clause 139, page 104, lines 21 and 22 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 28

Clause 140, page 105, line 4 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 29

Clause 140, page 105, line 5 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 30

Clause 142, page 106, line 2 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 31

Clause 142, page 106, line 9 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 32

Clause 142, page 106, line 11 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 33

Clause 142, page 106, line 15 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 34

Clause 142, page 106, line 18 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 35

Clause 143, page 106, line 29 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 36

Clause 143, page 106, lines 30 and 31 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 37

Clause 143, page 106, lines 33 and 34 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 38

Clause 143, page 107, line 3 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 39

Clause 144, page 107, lines 17 and 18 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 40

Clause 144, page 107, line 23 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 41

Clause 144, page 107, line 26 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 42

Clause 144, page 107, lines 28 and 29 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

No. 43

Clause 212, page 155, after line 9 — To insert —

- (2) A person is not secluded merely because the person is alone in a room or area that the person is unable to leave because of frailty, illness or mental or physical disability.

No. 44

Clause 227, page 165, after line 17 — To insert —

- (2A) A person is not being physically restrained merely because the person is being provided with the physical support or assistance reasonably necessary —
 - (a) to enable the person to carry out daily living activities; or
 - (b) to redirect the person because the person is disoriented.

No. 45

Clause 241, page 178, lines 16 to 20 — To delete the lines and insert —

- (2) The person in charge of the hospital must ensure that a medical practitioner physically attends on the person, for the purpose of examining the person to assess the person's physical condition, as soon as practicable and, in any event, within 12 hours after the time when the person is admitted or received, and at reasonable intervals after that initial attendance, until the first of these things occurs —
 - (a) the person is examined by a medical practitioner;
 - (b) if the person is a voluntary inpatient —
 - (i) the person refuses to consent to being examined by a medical practitioner; or
 - (ii) if the person does not have the capacity to consent to being examined by a medical practitioner — the person who is authorised by law to consent to the provision of treatment to the person refuses to consent to the person being examined by a medical practitioner;
 - (c) the person is released or discharged by or otherwise leaves the hospital.

No. 46

Clause 241, page 178, lines 21 to 23 — To delete the lines and insert —

- (3) For the purpose of assessing under this section the physical condition of a person referred to in subsection (1)(a)(ii) or (iii) or (b), these things may be done without consent —

No. 47

Clause 241, page 178, lines 27 and 28 — To delete “purposes of subsection (2)” and insert —

purpose of assessing under this section the person's physical condition

No. 48

Clause 248, page 183, line 25 — To delete “that” and insert —

that, as soon as practicable after the refusal,

No. 49

Clause 253, page 185, line 24 — To delete “\$15 000” and insert —

\$24 000

No. 50

Clause 254, page 186, before line 1 — To insert —

- (b) unlawful sexual contact with the person by a person who is not a staff member of a mental health service that occurs at a hospital; or

No. 51

Clause 305, page 218, after line 2 — To insert —

- (iii) the carrying out of medical or epidemiological research relating to mental illness;

No. 52

Clause 305, page 218, after line 10 — To insert —

provide, in relation to a mental health service, includes to carry out;

No. 53

Clause 317, page 226, line 22 — To delete “who is” and insert —

and is

No. 54

Clause 317, page 226, after line 24 — To insert —

- (e) a person who is being paid through a funding arrangement with government to provide free advocacy services and is representing a person who has, or may have, a mental illness or a carer of a person who has, or may have, a mental illness.

No. 55

Clause 320, page 228, line 18 — To insert after “by” —

delaying,

No. 56

Clause 328, page 234, lines 13 and 14 — To delete the lines.

No. 57

Clause 337, page 243, line 29 — To delete the line and insert —

so many of those people as the Director considers appropriate.

No. 58

Clause 360, page 262, line 29 — To delete “section 249(1)(a).” and insert —

section 249(1)(a) or (b) or (3).

No. 59

Clause 360, page 263, lines 4 and 5 — To delete “section 249(1)(a); and” and insert —

section 249(1)(a) or (b) or (3), as the case requires; and

No. 60

Clause 361, page 263, line 19 — To delete “section 249(1)(a); and” and insert —

section 249(1)(a) or (b) or (3); and

No. 61

Clause 393, page 282, lines 19 to 22 — To delete the lines and insert —

- (b) if the proceeding relates to an application made under section 390 and the applicant is not the involuntary patient — the applicant; and

No. 62

Clause 397, page 284, line 27 — To delete “*order*) —” and insert —

order) that is or was in force —

No. 63

Clause 398, page 285, line 5 — To delete “section 400” and insert —

section 400(1)

No. 64

Clause 398, page 285, line 6 — To insert after “order is” —

or was

No. 65

Clause 400, page 286, line 24 — To delete “patient;” and insert —

patient or the person who was the subject of the treatment order;

No. 66

Clause 400, page 286, line 27 — To delete “patient;” and insert —

patient or of the person who was the subject of the treatment order;

No. 67

Clause 400, page 286, after line 30 — To insert —

- (2) An application cannot be made under section 398(1) in respect of a treatment order that ceased to be in force more than 6 months ago unless, in the Tribunal’s opinion, the applicant shows good reason for the delay.

No. 68

New Clause 400A, page 286, after line 30 — To insert —

400A. Parties to proceeding

The parties to a proceeding under this Division are —

- (a) the involuntary patient or the person who was the subject of the treatment order; and
- (b) if the proceeding relates to an application made under section 398(1) and the applicant is not the involuntary patient or the person who was the subject of the treatment order — the applicant.

No. 69

Clause 401, page 287, line 3 — To insert after “to be” —

or to have been

No. 70

Clause 401, page 287, line 4 — To insert after “order is” —

or was

No. 71

Clause 401, page 287, line 5 — To insert after “been” —

or was

No. 72

Clause 401, page 287, line 14 — To insert after “been” —

or were

No. 73

New Clause 401A, page 287, after line 15 — To insert —

401A. Discretion not to decide on validity of treatment order no longer in force

- (1) In this section —
question of law includes a question of mixed fact and law.
- (2) The Tribunal is not required to decide whether a treatment order that was in force was valid or invalid, but may do so if satisfied that the matter raises —
 - (a) a question of law; or
 - (b) a matter of public interest.

No. 74

Clause 404, page 288, lines 14 to 16 — To delete the lines and insert —

- (b) if the applicant is not the long-term voluntary inpatient — the applicant; and

No. 75

Clause 409, page 290, line 31 — To delete the line and insert —

- (b) the applicant; and

No. 76

Clause 416, page 294, line 9 — To delete the line and insert —

- (b) the applicant; and

No. 77

Clause 420, page 296, after line 5 — To insert —

- (c) to ensure that a treatment, support and discharge plan for a patient is prepared, reviewed or revised;

No. 78

Clause 426, page 298, lines 26 and 27 — To delete the lines.

No. 79

Clause 431, page 300, lines 16 to 18 — To delete the lines and insert —

- (b) if the applicant is not the person who made the nomination — the applicant; and

No. 80

Clause 433, page 301, lines 10 and 11 — To delete the lines and insert —

- (b) if the applicant is not the person whose rights it is alleged are affected — the applicant; and

No. 81

Clause 444, page 303, line 28 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

No. 82

Clause 444, page 304, line 5 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

No. 83

Clause 445, page 305, line 13 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

No. 84

Clause 445, page 305, line 18 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

No. 85

Clause 447, page 307, lines 4 and 5 — To delete the lines and insert —

- (a) may appear in person; or
- (aa) may be represented by any of these people —
 - (i) a legal practitioner;
 - (ii) a mental health advocate;
 - (iii) any person who, in the Tribunal’s opinion, is willing and able to represent the adult’s interests;

or

No. 86

Clause 447, page 307, line 6 — To delete “another person” and insert —

a person listed in paragraph (aa)

No. 87

Clause 447, page 307, line 9 — To delete “may” and insert —

must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party,

No. 88

Clause 448, page 307, lines 28 to 30 — To delete the lines and insert —

(iii) the child’s parent or guardian;

No. 89

Clause 448, page 308, line 4 — To delete “another person” and insert —

a person listed in paragraph (b)

No. 90

Clause 448, page 308, line 7 — To delete “may” and insert —

must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party,

No. 91

Clause 449, page 308, lines 25 to 27 — To delete the lines and insert —

(c) the child’s parent or guardian;

No. 92

Clause 450, page 309, line 5 — To delete “at a hearing” and insert —

in a proceeding

No. 93

Clause 454, page 311, after line 15 — To insert —

- (3A) The Tribunal must make arrangements for the person concerned in a proceeding to be represented at a hearing or a part of a hearing if —
- (a) the person concerned is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing and is appearing in person in the proceeding; or
 - (b) the person concerned’s representative in the proceeding is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing.

No. 94

Clause 454, page 311, line 16 — To delete the line.

No. 95

Clause 456, page 312, line 3 — To insert after “person” (2nd occurrence) —

chosen

No. 96

Clause 518, page 346, after line 20 — To insert —

- (4A) The Chief Psychiatrist cannot give the psychiatrist a direction under subsection (4)(b) to provide the patient with specified treatment unless the Chief Psychiatrist gives the psychiatrist a reasonable opportunity to withdraw from being the patient’s psychiatrist.

No. 97

Clause 575, page 381, line 26 — To delete “332(7),” and insert —

332(7) and (8),

No. 98

Clause 582, page 387, line 12 — To insert after “charge” —

in good faith

No. 99

Clause 582, page 387, line 22 — To delete “section 227(2) and (3),” and insert —

section 227(2) to (6),

No. 100

Schedule 2, page 393, in the Table, after row 10 — To insert —

s. 129(5)	The making of a transport order under s. 129(2)	The practitioner who makes the order
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Clerk of the Legislative Council