

MENTAL HEALTH AMENDMENT (PSYCHIATRISTS) BILL 2012

EXPLANATORY MEMORANDUM

Overview of the Bill

This Bill amends the definition of psychiatrist in the *Mental Health Act 1996* (MH Act) so that all psychiatrists in Western Australia deemed competent to carry out functions under the MH Act can continue to do so.

Western Australia currently employs over 25 overseas qualified psychiatrists. Advice from the State Solicitor's Office indicates that overseas qualified psychiatrists, whose names are not in the register of specialist psychiatrists kept by the Medical Board of Australia, cannot carry out the functions of a psychiatrist under the MH Act.

In effect, the Bill restores the ability to recruit overseas qualified psychiatrists to carry out functions under the MH Act – a matter of particular concern in regional and remote areas of the State.

As well as amending the definition of psychiatrist in the MH Act, the Bill inserts a new provision into the MH Act validating certain acts done, and omissions made, by a psychiatrist under the MH Act on or after 18 October 2010. This is the date on which the *Health Practitioner Regulation National Law (WA) Act 2010* commenced.

The Bill also amends the definition of psychiatrist in the *Hospitals and Health Services (Day Hospital Facility) Determination (No. 2) 2005* and the Poisons Regulations 1965.

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

Part 1 Preliminary matters

This Part contains the title of the Bill and the commencement provisions.

Clause 1 Short title

Clause 1 provides that the title of the Bill is the *Mental Health Amendment (Psychiatrists) Act 2012*.

Clause 2 Commencement

This clause provides that the Bill will come into operation on the day on which it receives Royal Assent. This will allow the amendments to come into effect as soon as possible.

Part 2 Mental Health Act 1996 amended

This Part amends the definition of psychiatrist in the MH Act and inserts in the MH Act a provision validating certain acts done, and omissions made, by a psychiatrist under the MH Act on or after 18 October 2010.

Clause 3 Act amended

This clause provides that Part 2 of the Bill amends the MH Act.

Clause 4 Section 3 amended

Clause 4 amends the definition of psychiatrist in section 3 of the MH Act. The amended definition provides that a psychiatrist means a medical practitioner who either:

- (a) is a fellow of the Royal Australian and New Zealand College of Psychiatrists; or
- (b) holds specialist registration under the *Health Practitioner Regulation National Law (Western Australia)* in the specialty of psychiatry; or
- (c) holds limited registration under that Act that enables the medical practitioner to practice in the specialty of psychiatry.

On 18 October 2010, the definition of psychiatrist in the MH Act was amended by the *Health Practitioner Regulation National Law (WA) Act 2010* (National Law). As a result of this amendment, the MH Act defines psychiatrist as “a person whose name is contained in the register of specialist psychiatrists kept by the Medical Board of Australia under the *Health Practitioner Regulation National Law (Western Australia)* section 223”.

This current definition of psychiatrist in the MH Act has created an impediment to the registration of overseas qualified psychiatrists who, although competent to carry out functions under the MH Act, are not eligible to be included in the register of specialist psychiatrists kept by the Medical Board of Australia.

Now, as a result of the National Law, in order for a medical practitioner to be able to carry out the functions of a psychiatrist under the MH Act, he or she must be registered as a specialist in the specialty of psychiatry.

Prior to the changes to the definition of psychiatrist in the MH Act, certain overseas qualified psychiatrists would receive “conditional” or “restricted” registration. This would allow them to carry out all functions of a psychiatrist under the MH Act subject to the conditions and/or restrictions applicable to their registration as a psychiatrist.

The National Law now provides for a grant of limited registration for certain purposes, including for area of need service provision, and for postgraduate training or supervised practice. Areas of need are geographical or health

service areas for which it is difficult to recruit health professionals. The National Law allows a medical practitioner to be granted "limited registration" under an area of need if the practitioner does not have the full qualifications and accreditation needed for specialist registration, but does meet a minimum standard for area of need as determined by the relevant health practitioner registration board. The State Solicitor's Office has advised, however, that the operation of the MH Act precludes a medical practitioner with limited registration from performing the functions of a psychiatrist under the MH Act, and that only those with specialist registration are able to perform these functions.

This amended definition of psychiatrist allows psychiatrists with limited registration under the National Law to perform functions under the MH Act. It reflects the recently amended definition of psychiatrist in the *Tasmanian Mental Health Act 1996*. Queensland has also amended the definition of psychiatrist in its *Mental Health Act 2000* to ensure suitably qualified "area of need" psychiatrists in remote and regional areas of Queensland fall within the scope of the National Law.

Clause 5 *Section 216 inserted*

Clause 216 inserts a new provision into the MH Act validating every act or thing purported to have been done by a psychiatrist under the MH Act on or after 18 October 2010. This is the date on which the National Law commenced.

Retrospective application of the amended definition of psychiatrist in this Bill is necessary to correct an oversight that occurred unintentionally through the passage of the National Law. Backdating the amendment to 18 October 2010 will ratify decisions, and will provide surety to affected medical practitioners who have been performing functions under the MH Act.

Retrospectivity is intended purely to clarify the legitimacy of any official medical role, and will not deprive patients of their legal right to take action for any alleged clinical failure on or after 18 October 2010.

Part 3 Instruments amended

This Part amends the definition of psychiatrist in certain other instruments. Although it is not usual practice to amend subsidiary legislation by an Act, Parliamentary Counsel has agreed that an exception to the usual practice is warranted to ensure any problems caused by the current definition of psychiatrist in these instruments are rectified as soon as possible.

Clause 6 *Hospitals and Health Services (Day Hospital Facility) Determination (No. 2) 2005 amended*

Clause 6 amends the definition of psychiatrist in the *Hospitals and Health Services (Day Hospital Facility) Determination (No. 2) 2005* so that the term psychiatrist in the Determination has the same meaning as that in the MH Act.

Clause 7 *Poisons Regulations 1965 amended*

Clause 7 amends the Poisons Regulations 1965 so that the term psychiatrist in the Regulations has the same meaning as that in the MH Act.

Clause 8 *Power to amend or repeal unaffected*

Clause 8 ensures that the power to amend or repeal the definition of psychiatrist in the *Hospitals and Health Services (Day Hospital Facility) Determination (No. 2) 2005* and the Poisons Regulations 1965 is not limited to amendment or repeal by an Act.