Queensland

MENTAL HEALTH AMENDMENT BILL 1997

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1997

A BILL

FOR

An act to amend the *Mental Health Act 1974*

The Parliament of Queensland enacts—

Short title

Clause **1.** This Act may be cited as the *Mental Health Amendment Act 1997*.

Act amended

Clause **2.** This Act amends the *Mental Health Act 1974*.

Amendment of s 5 (Interpretation)

Clause **3.** Section 5(1)—

insert—

‘ **“health service employee”** see *Health Services Act 1991*, section 2.[1]’.

Insertion of new s 33A

Clause **4.** After section 33—

insert—

‘**Procedure on finding of unsoundness of mind**

‘**33A.(1)** If, under section 33, the Mental Health Tribunal finds that a person charged with an offence was, at the time the alleged offence was committed, suffering from unsoundness of mind, the tribunal must order the person be detained as a restricted patient under this part in a security patients’ hospital or in another hospital.

‘**(2)** The order is lawful authority to all police officers, employees of the hospital and health service employees, using reasonable force—

1 Under the *Health Services Act 1991*, section 5, the chief executive may appoint persons in the department as health service employees for the delivery of public sector health services.

(a) to take the person to the hospital; and

(b) to detain the person under the order.'.

Insertion of new s 34A

Clause **5.** After section 34—

insert—

'**Leave of absence**

'**34A.(1)** This section applies if, under section 33A or 34, the Mental Health Tribunal orders a person's detention as a restricted patient under this part in a security patients' hospital or in another hospital.

'**(2)** The tribunal may, by order, grant the patient leave of absence from the hospital if it is satisfied the patient can be released having regard to the interests of the patient's own welfare and the protection of other persons.

'**(3)** The leave of absence may be granted on the conditions the tribunal considers appropriate.

'**(4)** The conditions must be stated in the order.

'**(5)** The leave of absence takes effect immediately on the making of the order and continues in force until—

(a) a Patient Review Tribunal reviews the patient's liability to be detained as a restricted patient under this part; or

(b) the leave of absence is revoked, under the conditions stated in the order granting the leave of absence, by—

(i) the hospital administrator for the hospital stated in the order or another hospital to which the patient is transferred; or

(ii) the designated medical practitioner for the patient; or

(iii) the director.

'**(6)** At any time after revocation of the leave of absence, the designated medical practitioner for the patient may, by written notice, grant the patient fresh leave of absence if the practitioner is satisfied the patient can be released having regard to the interests of the patient's own welfare and the

protection of other persons.[2]

'**(7)** Leave of absence under subsection (6) must be granted on the same conditions as stated in the Mental Health Tribunal's order.'.

Replacement of pt 8 heading (Transitional provisions)

Clause **6.** Part 8, heading—

omit, insert—

'PART 8—TRANSITIONAL AND VALIDATION PROVISIONS'.

Insertion of new s 80

Clause **7.** After section 79—

insert—

'**Validation of certain orders**

'**80.(1)** In this section—

"health service employee" includes an employee of—

(a) a hospitals board formerly established under the repealed *Hospitals Act 1936*; and

(b) a regional health authority formerly established under the *Health Services Act 1991*.

'**(2)** This section applies if, before the commencement of this section—

(a) the Mental Health Tribunal found that a person charged with an offence was, at the time the alleged offence was committed, suffering from unsoundness of mind; and

(b) the tribunal made either or both of the following orders—

(i) an order that the person be detained, or liable to be detained, as a restricted patient in a security patients' hospital or

[2] Also, the patient may be released, including on leave of absence, by a Tribunal under section 36(b) (Review of patient detained as restricted patient under this part).

another hospital;

(ii) an order granting the person leave of absence from the hospital.

‘**(3)** It is declared that an order mentioned in subsection (2)(b)—

(a) is, and from the time of the order’s making was, for section 28C(1), taken to have been validly made to give effect to the tribunal’s finding; and

(b) is, and from the time of the order’s making was, lawful authority to all police officers, employees of the hospital and health service employees, using reasonable force—

(i) to take the person to the hospital; and

(ii) to detain the person under the order.

‘**(4)** This section has effect whether the order purports to have been made under section 28C or another section of this Act.

‘**(5)** This section expires the day after it commences.’.

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