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MENTAL HEALTH LEGISLATION AMENDMENT BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Mental Health Legislation Amendment Bill 2024 (**Bill**) proposes amendments to the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (**Forensic Provisions Act**) to provide that:

- the Mental Health Review Tribunal (**Tribunal**) must not make an order granting leave to a forensic patient (other than leave in which the forensic patient will be escorted by an employee of the facility where the patient is detained) unless the Tribunal is constituted by at least one member that is appropriately qualified as a current or former judicial officer; and
- the Tribunal may impose conditions relating to a forensic patient's access to social media and other forms of online communication while on leave or following release.

The Bill also amends the *Mental Health Act 2007* (**Mental Health Act**) to allow magistrates serving as President or full-time Deputy President of the Tribunal and judges appointed as full-time Deputy Presidents of the Tribunal to retain their tenure, rank, title, status, precedence, salary and allowances (if higher than the salary and allowances of President or full-time Deputy President), and other entitlements for the duration of the appointment.

Objectives: What is the policy's objective couched in terms of the public interest?

The objective of the amendments to the Forensic Provisions Act is to ensure that there is judicial oversight surrounding leave decisions for forensic patients by requiring that a Tribunal be constituted by at least one member who is the holder or former holder of judicial office when the Tribunal is to grant orders for leave (other than in circumstances of escorted leave) for a forensic patient. This is in line with the current requirements for orders granting release of forensic patients.

As this amendment will require judicial officers to sit on more Tribunal hearings, the Bill aims to assist in attracting magistrates and judges to the Tribunal, by providing that magistrates serving as President or full-time Deputy President and judges serving as full-time Deputy President of the Tribunal will retain their judicial appointment and other entitlements and be entitled to the higher remuneration of either appointment. Further, this will facilitate judges and Magistrates to be appointed to the Tribunal for short periods, if required.

In addition, and in recognition of the increasingly digital world, the Bill aims to expressly recognise that the Tribunal can impose conditions prohibiting or regulating a forensic patient's use of social media, or other forms of online communication, when granting leave or release.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The Government considers that the policy is best implemented by legislative amendment so as to require leave decisions (other than escorted leave) to have judicial oversight and expressly recognise that the Tribunal can make orders in relation to restricting or regulating social media, or other online communication, access.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Bill is expected to increase public confidence in Tribunal decisions relating to orders for the leave and release of forensic patients. There is strong public interest in ensuring that such decisions are given appropriate consideration.

If the amendments to the Mental Health Act are not made, it may be difficult for the Tribunal to attract a large enough pool of judicial officers for potential appointments. This could lead to delays in the Tribunal which could, in turn, impact on the treatment and care of forensic patients.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill will commence on proclamation. This will ensure that any resourcing impacts of the new requirement regarding involvement of judicial officers in all decisions to grant release and leave (other than when escorted by a person employed at the mental health facility or other place of detention where the forensic patient is detained) are considered before commencement. The Tribunal will be responsible for ensuring that there are sufficient judicial officers to consider leave orders.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Ministry of Health consulted the Tribunal in connection with the proposed amendments.