

TASMANIA

MENTAL HEALTH AMENDMENT BILL 2005

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MENTAL HEALTH AMENDMENT BILL 2005

*(Brought in by the Minister for Health and Human Services,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to amend the *Mental Health Act 1996*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Mental Health Amendment Act 2005*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Mental Health Act 1996** is referred to as the Principal Act.

*No. 31 of 1996

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “assessment centre”:

“authorisation for temporary admission” means an authorisation under section 44A for the temporary admission as an involuntary patient to an approved hospital of a patient to whom a community treatment order applies;

- (b) by omitting the definition of “involuntary patient” and substituting the following definition:

“involuntary patient” means –

- (a) a person in respect of whom an order is in force under this Act; or
- (b) a person who is admitted to an approved hospital on the authority of an authorisation for temporary admission;

5. Section 15 amended (Power to take person into protective custody)

Section 15 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) A police officer or an authorised officer may exercise powers under this section regardless of whether or not the person –
 - (a) is the subject of an order or an authorisation for temporary admission under this Act; or
 - (b) has applied for a review of any decision, notice, order or authorisation for temporary admission under this Act; or
 - (c) is the subject of any other process or proceeding under this Act.

6. Section 17 amended (Admission of patients)

Section 17 of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

- (c) under an initial order, a continuing care order or an authorisation for temporary admission.

7. Section 28 amended (Continuing care order)

Section 28(1)(b) of the Principal Act is amended as follows:

- (a) by omitting from subparagraph (ii) “order.” and substituting “order; or”;
- (b) by inserting the following subparagraph after subparagraph (ii):
 - (iii) an authorisation for temporary admission.

8. Section 30 amended (Rectification of orders, &c.)

Section 30 of the Principal Act is amended as follows:

- (a) by omitting “order” first occurring and substituting “order, an authorisation for temporary admission”;
- (b) by inserting “or authorisation” after “order, the order”;
- (c) by inserting “or authorisation” after “defective, the order”;
- (d) by inserting “or authorisation” after “which the order”.

9. Section 39 amended (Transfer of involuntary patient)

Section 39(3) of the Principal Act is amended by omitting “patient” second occurring and substituting “patient, or an authorisation for temporary admission of the patient,”.

10. Section 43 substituted

Section 43 of the Principal Act is repealed and the following section is substituted:

43. Requirements of patient under community treatment order

(1) In this section –

“**specified**” means specified in a community treatment order.

(2) A community treatment order may –

(a) require the patient to take, or submit to the administration of, medical treatment as specified or as decided from time to time by a specified medical practitioner or a medical practitioner practising at a specified treatment centre; or

(b) require the patient to attend as an outpatient at a specified treatment centre at specified intervals or as directed from time to time by a specified medical practitioner or a medical practitioner practising at the specified treatment centre; or

(c) require the patient to comply with other specified requirements or requirements made from time to time by a specified person.

(3) A community treatment order is to contain a statement that the patient may be admitted to an approved hospital as an involuntary patient if the patient fails to

comply with the requirements of the order.

- (4) If a community treatment order, whether made before or after the commencement of this subsection, does not contain a statement of a kind referred to in subsection (3), it is taken to contain such a statement.

11. Section 44 amended (Term and renewal of community treatment order)

Section 44 of the Principal Act is amended as follows:

- (a) by omitting subsection (3) and substituting the following subsections:

(3) If the person to whom a community treatment order relates is admitted to an approved hospital as a voluntary patient, the order is suspended while the person remains a patient in the hospital and reactivates on the discharge of the person from the hospital unless it has otherwise ceased to have effect under this section.

(3A) If the person to whom a community treatment order relates is admitted to an approved hospital as an involuntary patient otherwise than on an authorisation for temporary admission, the order is suspended

while the person remains a patient in the hospital and reactivates on the discharge of the person from the hospital unless it has otherwise ceased to have effect under this section.

(3B) If the person to whom a community treatment order relates is admitted as an involuntary patient to an approved hospital on an authorisation for temporary admission, the order is suspended while the person remains a patient in the hospital under that authorisation and reactivates on the discharge of the person from the hospital unless it has otherwise ceased to have effect under this section.

(3C) While a community treatment order is suspended it is of no effect.

- (b) by omitting from subsection (4)(d) “months.” and substituting “months; or”;
- (c) by inserting the following paragraph after paragraph (d) in subsection (4):
 - (e) the authorisation for temporary admission ends under section 44C(e) because the period of 14 days referred to in that section elapses.

12. Part 7, Division 3 inserted

After section 44 of the Principal Act, the following Division is inserted in Part 7:

Division 3 – Authorisation for temporary admission as involuntary patient under community treatment order

44A. Authorisation for temporary admission as involuntary patient under community treatment order

- (1) An approved medical practitioner may authorise the temporary admission to an approved hospital as an involuntary patient of a patient to whom a community treatment order relates if that approved medical practitioner and either an authorised officer, a medical practitioner or the person responsible for the patient are both satisfied that –
 - (a) the patient has failed to comply with the order; and
 - (b) all reasonable steps have been taken to obtain the cooperation of the patient in complying with the order; and
 - (c) the health of the patient has deteriorated, or there is a significant risk that the health of the patient will deteriorate, because of the patient's failure to comply with the order.
- (2) An authorisation for temporary admission is to –

- (a) be in writing; and
- (b) specify –
 - (i) the name and address of the patient to whom the community treatment order applies; and
 - (ii) the name and address of the approved medical practitioner making the authorisation; and
 - (iii) the name and address of the authorised officer, medical practitioner or person responsible who, along with the approved medical practitioner making the authorisation, must be satisfied of the matters set out in subsection (1)(a), (b) and (c); and
 - (iv) the name of the approved hospital to which it is intended that the patient be admitted; and
 - (v) the date and time of the making of the authorisation; and
- (c) include a statement of each of the matters set out in subsection (1)(a), (b) and (c).

- (3) On making an authorisation for temporary admission, the approved medical practitioner is to take all reasonable steps to –
 - (a) inform the patient of the authorisation; and
 - (b) provide a copy of the authorisation to the patient and to the person responsible for the patient.
- (4) An authorisation for temporary admission takes effect when it is made.

44B. Effect of authorisation for temporary admission

- (1) If an authorisation for temporary admission has been made –
 - (a) an authorised officer may take the patient to whom the authorisation applies into protective custody and take him or her as soon as practicable to an approved hospital; and
 - (b) the authorisation is authority for the controlling authority of an approved hospital to admit the patient and detain him or her after admission for a period not exceeding 14 days.
- (2) In exercising powers under subsection (1)(a), an authorised officer –

- (a) may be assisted by any person the authorised officer considers appropriate, including a police officer; and
- (b) may use such force as is reasonably necessary.

44C. End of authorisation for temporary admission

An authorisation for temporary admission relating to a patient ends when the first of the following occurs:

- (a) the approved medical practitioner who made the authorisation cancels it;
- (b) the elapse of the period of 28 days commencing on the day on which the authorisation is made unless the patient is admitted to an approved hospital on the authority of the authorisation within that period;
- (c) after the patient is admitted to an approved hospital as an involuntary patient on the authority of the authorisation, the patient is discharged from the hospital by the medical practitioner who is in charge of his or her care and treatment;
- (d) after the patient is admitted to an approved hospital as an

involuntary patient on the authority of the authorisation, a continuing care order is made in respect of the patient;

- (e) the elapse of the period of 14 days commencing on the admission of the patient to an approved hospital as an involuntary patient on the authority of the authorisation;
- (f) the community treatment order to which the authorisation relates ceases to have effect under section 44(4)(a), (b) or (c).

13. Section 45 amended (Involuntary patients to be given statement of their legal rights)

Section 45 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or an authorisation for temporary admission” after “an order”;
- (b) by inserting in subsection (1) “or authorisation” after “the order”;
- (c) by inserting in subsection (2)(e) “or authorisation for temporary admission” after “order”.

14. Section 52 amended (Reviews of continuing care orders, community treatment orders and authorisations for temporary admission)

Section 52(4) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) an authorisation for temporary admission; or

15. Section 53 amended (Applications for review)

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “decision or order” and substituting “decision, order or authorisation for temporary admission”;
- (b) by omitting from subsection (2) “decision or order” and substituting “decision, order or authorisation for temporary admission”;
- (c) by omitting from subsection (3)(a) “decisions or orders” and substituting “decisions, orders or authorisations for temporary admission”.

16. Section 65 amended (Powers of Tribunal on review)

Section 65(1) of the Principal Act is amended as follows:

- (a) by omitting “decision” first occurring and substituting “decision, authorisation for temporary admission”;
- (b) by omitting from paragraph (a) “decision” three times occurring and substituting “decision, authorisation for temporary admission”;
- (c) by omitting from paragraph (c) “decision” and substituting “decision, authorisation for temporary admission”.

17. Section 70 amended (Requirement to notify orders, &c., to Tribunal)

Section 70(1) of the Principal Act is amended by inserting “or an authorisation for temporary admission” after “care order”.

18. Expiry

- (1) The amendments to the Principal Act effected by this Act expire 3 years after the day on which this Act commences (inclusive of that day) and, on that expiry, the Principal Act has effect as if this Act had not been enacted.
- (2) The amendments to the Principal Act effected by this Act continue to apply after their expiry under subsection (1) in relation to an authorisation for temporary admission that was in effect immediately before that expiry.
- (3) In subsection (2) –

“authorisation for temporary admission”
has the same meaning as in the Principal
Act as in force immediately before the
expiry effected by subsection (1).