

FACT SHEET

Mental Health Amendment Bill 2016

The Mental Health Amendment Bill 2016 (the Bill) amends the Mental Health Act 2013 (the Act) to clarify and improve the Act's operation.

The Act establishes a contemporary, rights-based framework for the compulsory assessment and treatment of people with serious mental illness. It was developed in collaboration with stakeholders and commenced operation in February 2014.

Since the Act's commencement, clinicians and the Mental Health Tribunal have provided feedback about several aspects of the legislation's operation. This includes the assessment and treatment pathway established by the Act. As with most new legislation, drafting anomalies have also been identified which require amendment.

The Bill amends the assessment and treatment pathway established by Act, to remove duplication and provide clarity around particular aspects of the pathway.

The Act was drafted to be the primary source of authority for the involuntary assessment, treatment and care of people with mental illness in Tasmania. While the Act defines assessment and treatment it does not define "care". This has caused some confusion about the Mental Health Tribunal's ability to make decisions about care-type matters, including a person's post-discharge accommodation. The Bill addresses this issue by removing references to "care", thereby removing such matters from the Tribunal's jurisdiction.

The Bill amends the Act to streamline the process which must be followed by a medical practitioner when making an Assessment Order. The Act currently requires a medical practitioner to be in possession of an application, before an Assessment Order can be made. This is cumbersome and the need to locate an applicant and obtain an application can, at times, lead to delays in the assessment of critically unwell patients. The Bill addresses this issue by enabling a medical practitioner to make an Assessment Order without an application.

The Act regulates the compulsory treatment of people with mental illness and enables treatment to be given to a person with mental illness who lacks decision-making capacity only if there is a Treatment Order, or if the treatment is authorised by the Chief Civil Psychiatrist (for involuntary patients) or Chief Forensic Psychiatrist (for forensic patients) as urgent circumstances treatment.

The urgent circumstances treatment pathway requires specific authorisation from a Chief Psychiatrist before treatment may be commenced, to reduce the risk that a person may pose to him or herself, or others. The authorisation process requires involvement from up to three separate clinicians, which can be problematic overnight and in remote areas where access to the required number of senior clinical staff may be limited. This has potential to be detrimental to consumers whose state of mental health may decline pending completion of the authorisation process. The Bill therefore streamlines provisions relating to urgent circumstances treatment to address this issue.

The Bill also clarifies when a person subject to an Assessment or Treatment Order may be detained under the Order, as well as clarifying the Mental Health Tribunal's ability to make a Treatment Order that is authority for the patient to be treated in the community, or in hospital, and which permits the patient to move between treatment settings in relevant circumstances.

The Act requires the Mental Health Tribunal to review a Treatment Order within 30 and 90 days after the Order is made, if the Order is still in effect at that time.

Feedback received has suggested that:

- there is often very little change in the patient's condition or treatment needs between an Order being made and the 30 day review;
- the 30 day review often coincides with the patient's transition from hospital to the community. In such cases the community team may have assumed formal responsibility for the patient but may not have had sufficient time to engage with him or her;
- the majority of patients on a Treatment Order 30 days after the Order is made, are still on the Order 90 days after the Order is made; and
- the reviews are resource intensive and the time required from clinicians to prepare for and attend hearings can unreasonably impact on the time available to provide adequate patient care.

To address these issues, the Bill amends the Act to require the Mental Health Tribunal to review a Treatment Order within 60 and 180 days after the Order is made, if the Order is still in effect at that time. A person with standing (including a patient) will still be able to request a review at any other time during the course of their Treatment Order.

Lastly, the Bill makes a number of other amendments to address drafting inconsistencies and to provide increased clarity to consumers and clinicians about their rights and responsibilities under the Act.

The amendments have been recommended by clinicians and are supported by the Mental Health Tribunal and other stakeholders.