

FACT SHEET

Mental Health Amendment Bill 2009

The *Mental Health Act 1996* enables a person with a mental illness to be placed on a community treatment order if:

- because of the mental illness, there is a significant risk of harm to the person or others unless the mental illness is treated;
- the order is necessary to ensure that the illness is properly treated; and
- there are facilities or services available for the person's care or treatment.

Community treatment orders essentially allow an involuntary patient to receive treatment in the community rather than in hospital provided the patient complies with the terms of the order. This may include taking or submitting to the administration of medication, or attending a treatment centre.

The use of community treatment orders in appropriate cases is consistent with the principles of the *Mental Health Act 1996* which dictate that wherever possible, people with mental illness should be treated in the community.

The *Mental Health Amendment Act 2005* amended the *Mental Health Act 1996* to enable a patient found to have failed to comply with the terms of a community treatment order to be temporarily admitted to an approved hospital for up to 14 days to obtain treatment. This effectively enables a patient's treating medical practitioner to intervene early to prevent a person's health from deteriorating.

Before the 2005 amendments, patients known to have failed to comply with a community treatment order could not be involuntarily admitted to hospital to receive treatment until they had become so unwell that they effectively constituted a significant risk of harm to themselves or to others. This effectively rendered community treatment orders unenforceable and as such they were rarely used.

Because of the 2005 amendments it is now possible for a patient's treating medical practitioner to intervene at an earlier point in time. Intervention can now occur at the point that the patient's health begins to deteriorate, or where there is a significant risk of this occurring.

The *Mental Health Amendment Act 2005* contains a sunset clause (section 19) such that the amendments to the *Mental Health Act 1996* brought about by the *Mental Health Amendment Act 2005* will expire on 11 January 2010. The sunset clause was included on the basis that the amendments provided an immediate and temporary alternative to the use of more restrictive or inappropriate orders, in light of the then impending review of the *Mental Health Act 1996*.

An outcome of the review of the *Mental Health Act 1996* is the development of a new Mental Health Act. The sunset clause was extended in 2007 to reflect the current position, to accommodate this task.

New legislation is in the process of being developed. It will not however be finalised by January 2010. The *Mental Health Amendment Bill 2009* seeks to amend section 19 to again extend the operation of the amendments for a further two years until 11 January 2012. This is a temporary measure designed to maintain the ability for community treatment orders to be enforced while the new Mental Health Act is being finalised.

The new Mental Health Act is expected to deal with the broader issues associated with compulsory treatment in the community by providing for a single Treatment Order which would operate both in community and in-patient settings, enabling patients to flexibly transition between treatment settings as and when required and appropriate. The new Mental Health Act will specify a range of possible responses in the event of failure to comply, including possible admission to hospital. Any change in treatment setting would be subject to Mental Health Tribunal oversight.