

FACT SHEET

Mental Health Amendment Bill 2011

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 persons' care or treatment.

Community treatment orders essentially allow an involuntary patient in respect of whom the above applies, 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 at 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). 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*. The sunset clause initially provided that the amendments to the *Mental Health Act 1996* brought about by the *Mental Health Amendment Act 2005* would expire in mid-2008.

As an outcome of the review of the *Mental Health Act 1996*, a new Mental Health Act is in the process of being developed. The task associated with the development of the new Act has been significantly more complex and time consuming than initially anticipated. As a result, the sunset clause has been extended on two occasions, in 2007 and 2009. The sunset clause now provides that the amendments to the *Mental Health Act 1996* brought about by the *Mental Health Amendment Act 2005* will expire on 11 January 2012.

A draft Bill for the new Mental Health Act was released for a six week consultation period in late June 2011. The intention at that time was to include provisions in the final Mental Health Bill, extending the sunset clause such that the amendments brought about by the *Mental Health Amendment Act 2005* would continue to operate beyond January 2012, to accommodate the time necessary to appropriately implement the new legislation.

The consultation period associated with the draft Mental Health Bill was extended for an additional six week period in late July 2011, in response to requests from a number of advocacy groups and peak body groups, on behalf of their respective constituencies which includes consumers, carers and community sector service providers for this to occur.

Feedback received in response to the draft Mental Health Bill is in the process of being analysed with a view to identifying how the Bill may need to be amended to address the concerns raised. This process will not however be completed with enough time for the final Mental Health Bill to be debated in Tasmanian Parliament during the Spring 2011 Parliamentary sitting. Instead it is more likely that the final Mental Health Bill will be tabled and debated in Tasmanian Parliament during the Autumn 2012 Parliamentary sitting with a view to commencing the new legislation later in 2012.

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 inpatient settings, enabling patients to flexibly transition between treatment settings as and when required and appropriate. The new Mental Health Act is expected to specify a range of possible responses in the event of failure to comply, including possible admission to hospital.

The *Mental Health Amendment Bill 2011* seeks to amend section 19 to again extend the operation of the amendments for a further 2 years until 11 January 2014. As with previous extensions this is a temporary measure designed to maintain the ability for community treatment orders to be enforced until such time as the new Mental Health Act commences.