

FACT SHEET

Mental Health (Transitional and Consequential Provisions) Bill 2013

The *Mental Health Act 2013* (the new Act) was recently passed by Tasmanian Parliament. The new Act is scheduled to commence on 1 January 2014.

The new Act does not include provisions consequentially amending other legislation, nor does it contain transitional provisions. Rather, a separate Bill – the *Mental Health (Transitional and Consequential Provisions) Bill 2013* – has been developed for this purpose.

This is consistent with the intention to date, to complete and table the *Mental Health (Transitional and Consequential Provisions) Bill* after the new Act's passage through Tasmanian Parliament and prior to the new Act's commencement on 1 January 2014.

The primary purpose of the *Mental Health (Transitional and Consequential Provisions) Bill* is to clarify how the new Act will intersect, once commenced, with other legislative frameworks. This includes the *Criminal Justice (Mental Impairment) Act 1999*, the *Corrections Act 1997* and the *Youth Justice Act 1997*. The amendments are generally of a minor nature and consist of replacing references to the current *Mental Health Act 1996* with references to the new Act; and making changes to terminology to ensure consistency with the new legislative framework.

The *Mental Health (Transitional and Consequential Provisions) Bill* also amends the new Act to address issues raised by stakeholders in relation to the then *Mental Health Bill 2012*, during the Bill's debate in Tasmanian Parliament. This includes in particular:

- Amendments to provisions of the new Act regulating seclusion and restraint to clarify the right for a person who is secluded and restrained to not be unreasonably deprived of access to a communication aid in appropriate circumstances
- Amendments to provisions regulating seclusion, restraint, force and urgent circumstances treatment to insert a requirement for notification of the authorisation of seclusion, restraint, force and urgent circumstances treatment, and a statement of rights, to be given to a patient who has been secluded or restrained
- Amendments to limit the circumstances in which information may be withheld, and in which the giving of information may be deferred or qualified, to ensure greater consistency with the United Nations Convention on the Rights of Persons with Disabilities
- Amendments to extend provisions prohibiting the publication of information about forensic patients, to involuntary patients

The *Mental Health (Transitional and Consequential Provisions) Bill* also amends the meaning of capacity contained in the new Act to enable the meaning to be meaningfully applied by a medical practitioner, as well as by a court or Tribunal.

Lastly the *Mental Health (Transitional and Consequential Provisions) Bill* contains a range of machinery type provisions designed to ensure continuity of statutory arrangements during the new Act's initial operation and until such time as the administrative arrangements enabled by the new legislation are effected, and settled. This includes, for example, provisions making it clear that an approved hospital under the old legislation is an approved hospital under the new legislation.