Mental Health Act Review Implementation Project – Tranche 1

Amendment Bill Consultation Guide

23 September 2022 v1.0

Office of the Chief Psychiatrist
Department of Health

Tasmanian Government

Document Acceptance and Release Notice

This is Version 1.0 of the Mental Health Act Review Implementation Project – Tranche 1 Amendment Bill Consultation Guide.

This is a managed document. For identification of amendments, version is assigned a release number. Changes will only be issued as complete replacement document. Recipients should remove superseded versions from circulation. This document is authorised for release once all signatures have been obtained.

PREPARED:		Date:	15-Sep-22
(for acceptance)	Rachael Andrews Project Officer, Mental Health Act Review Implementation Project, Department of Health		
ACKNOWLEDGED:		Date:	20-Sep-22
(for acceptance)	Dr Anthony Cidoni A/Chief Psychiatrist and Project Manager, Office of the Chief Psychiatrist, Department of Health		
ACCEPTED:		Date:	23-Sep-22
(for release)	Dale Webster Deputy Secretary, Mental Health and Wellbeing, and Project Sponsor, Department of Health		

Document Development History

Version	Date	Author	Reason	Sections
0.a	7 Sept 2022	Rachael Andrews	First Draft v0.a	All
0.b	7 Sept 2022	Rachael Andrews	General editing	All
0.c	8 Sept 2022	Rachael Andrews	Legal Services feedback	All
0.d	17 Sept 2022	Rachael Andrews	Steering Committee feedback	All
1.0	23 Sept 2022	Rachael Andrews	Final for Endorsement by Dep. Sec./Project Sponsor.	All

Contents

1. Project Background

The *Mental Health Act 2013* commenced on 17 February 2014.

The Tasmanian Minister for Mental Health and Wellbeing is required under section 229 of the *Mental Health Act 2013* (the Act) to review the operation of the Act, and complete the review, within six years after the Act's commencement.

The Minister is also required under section 229 of the *Mental Health Act 2013* to cause a Report on the outcome of the review to be tabled in each House of Parliament within 10 sitting-days of each House after the review is completed.

The review of the Act is necessary to satisfy the requirements of Section 229 of the Act.

The review also provided a mechanism for:

- satisfying stakeholder expectations that the Act's operation will be reviewed
- facilitating feedback from stakeholders on aspects of the Act's operation that impact on or concern them, and
- enabling issues with the Act's operation to be identified and conveyed to the Minister for Mental Health and Wellbeing and the Minister for Justice, and for those issues to be reported to the Tasmanian Parliament.

The Mental Health Act Review Implementation project is in direct response to the Review Outcomes report and the associated 29 recommendations outlined in the report.

The outcome review recommendations were accepted, and the final report published by the Tasmanian Government in June 2020.

Mental Health Act Review Implementation Project Objectives

The key focus of the project is to implement the 29 recommendations from the Review Outcomes report. The Review process involved broad consultation with representatives from the Government and non-Government sector, including people with lived experience, their families and their friends during 2019-2020. The review process included formal reference consultation groups to inform the recommendations outlined in the Review Outcomes Report.

The review outcomes recommendations cover three broad areas:

2. Legislative reform
3. Forms and processes
4. Training and workforce development.

The Outcome Report recommendations have been accepted by the Tasmanian Government for implementation across two tranches as follows:

5. Tranche 1 is scheduled to be delivered by end 2022, and
6. Tranche 2 is scheduled to be delivered by end 2023.

The objective(s) of the *Mental Health Act 2013* Reform Implementation Project are:

- To implement the 29 Review Outcomes in a way that aligns with the *Mental Health Act 2013* reform intent.
- To ensure that the Act continues to provide a contemporary framework for the people living with severe mental illness and who do not have capacity to decide about assessment or treatment for themselves. This must continue to occur in a way that places the patient at the centre of the decision making for suitable and necessary treatment and ensures the patient's rights are upheld.
- Ensure the Act promotes priorities identified as the building blocks for ongoing reform being:

    - Priority 1: promote person-centred approaches
    - Priority 2: Improve the mental health and social and emotional wellbeing of all Australians
    - Priority 3: Prevent mental illness
    - Priority 4: Focus on early detection and intervention
    - Priority 5: Improve access to high quality services and supports
    - Priority 6: Improve the social and economic participation of people with mental illness.

This document includes a summary of the most significant legislative amendments proposed for Tranche 1 of the Project. Tranche 1 includes the most straightforward amendments.

This document is intended to be a supplement reference to the Mental Health Act Amendment Bill and does not intend to replace the Amendment Bill. All stakeholders must refer to the Amendment Bill as the primary document when considering the proposed amendments under Tranche 1 of the *Mental Health Act 2013* Review Implementation Project.

2. What is the purpose of this document?

This document outlines the changes that are occurring under Tranche 1 of the Mental Health Act Review Implementation Project and includes the policy position and Outcomes Report reference that inform the Tranche 1 legislative amendments.

This document is only intended to be a guide and should be read with the *Mental Health Act 2013* Amendment Bill, as it is intended to highlight the most impactful amendments in the Bill.

The Mental Health Act Amendment Bill implements the proposed legislative changes flowing from the commitments made by the Tasmanian Government outlined in the Mental Health Act Review Outcomes Report, published in June 2020. The aim is to seek stakeholder feedback before it is presented to the Tasmanian Government Cabinet and the Legislative Council.

It is intended that any individual or organisation who wishes to make a submission in response to the consultation refers to the Amendment Bill in the first instance.

Further, more contentious changes to the *Mental Health Act 2013* will be made under Tranche 2 of the project and will be actioned in 2023.

3. Feedback

To develop legislation to implement recommendations of the Mental Health Act Review Outcomes Report, the Amendment Bill consultation process seeks stakeholder and community feedback to allow the proposals to be further considered before legislation is finalised.

The Amendment Bill is a direct response to the Mental Health Act Review Outcomes Report recommendations identified for action under tranche 1 of the project. It is requested that submissions be focused on whether the amendments are consistent with the outcomes report recommendations and whether the amendments are appropriate.

4. How to make a submission

Submissions should be made in writing and must be received by close of business on **Friday 21 October 2022.** Late submissions will not be accepted.

5. Written submissions may be made as outlined below

Email

Email your submission to: chief.psychiatrist@health.tas.gov.au **OR**

Post mail

Mail your submission to:

Mental Health Act Review Implementation Project – Tranche 1 Submission
Office of the Chief Psychiatrist
Department of Health
GPO Box 125
Hobart, Tasmania, 7001

Publishing submissions

Submissions will be treated as public information and will be published on the Department of Health, Office of the Chief Psychiatrist website.

Submissions will be published once the Government's consideration of the submissions has concluded. No personal information other than an individual's name or the organisation making a submission will be published.

Please note that feedback and discussion about submission details will only occur where clarification is needed and that any individual, representative group or organisation making a submission through this process may not receive feedback on their submission and subsequent drafting amendments that occur after this consultation closes.

For further information, please contact the Office of the Chief Psychiatrist on the e-mail above.

Details and further information, including the Review Outcomes Report Recommendations and the Mental Health Act Legislative Amendment Bill can be found at the link below:

Review of the Mental Health Act 2013 | Tasmanian Department of Health

6. Summary of primary changes to the *Mental Health Act 2013*

Below is a summary of the primary changes to the *Mental Health Act 2013* proposed through the associated Amendment Bill. This is not a complete list, rather it is a summary of the most notable amendments to the *Mental Health Act 2013* (the Act) under tranche 1 of the Mental Health Act Review 2013 Implementation Project.

Please note that due to the proposed amendments outlined in the Mental Health Act Amendment Bill, other associated Tasmanian legislation must also be amended. Please refer to the Amendment Bill document for details of these proposed changes as they are not outlined below.

MENTAL HEALTH ACT 2013 – CHIEF CIVIL AND CHIEF FORENSIC PSYCHIATRIST

Clause references:
Numerous Sections and clauses in *Mental Health Act 2013*

Change summary:
Removal of the terms of 'Chief Forensic Psychiatrist' and 'Chief Civil Psychiatrist' and replacing both with singular 'Chief Psychiatrist'.

Why this change is proposed:
These amendments allow the Act to be simplified as it only refers to one authority. The change has been included because both the roles are occupied by one individual, removing the need to refer to two authorities in the Act.
Further, there is a removal of the references in the Act for the Chief Civil to refer to the Chief Forensic Psychiatrist in decision making or clarifying patient matters. In practice this does not occur when there is one person appointed to both roles.

Links to:
Outcome 1 – The Government will consider amendments to the Act to more clearly link the Act's objects to its operational provisions and to make it easier to understand.

MENTAL HEALTH ACT 2013 – CONTEMPORARY USE OF STATE SERVICE DEFINITIONS

Clause References:
Multiple

Change summary:
Omitting references to State Servant and substituting State Service employee.

Why this change is proposed:
This is an update to terminology to ensure it aligns to the *State Service Act 2000* legislation and refers to the correct entity as defined in that Act.

Links to:
Outcome 1 – The Government will consider amendments to the Act to more clearly link the Act's objects to its operational provisions and to make it easier to understand.

MENTAL HEALTH ACT 2013 – USE OF THE TERM ABORIGINE

Clause References:
Section 3 Interpretation
Part 2, Chapter 2

Change summary:
Removal of the term Aborigine

Why this change is proposed:
Updating of the terminology to refer to Aboriginal people in Tasmania to ensure the Act remains contemporary and respectful.

Links to:
Outcome 1 – The Government will consider amendments to the Act to more clearly link the Act's objects to its operational provisions and to make it easier to understand.

MENTAL HEALTH ACT 2013 – DEFINITION OF PARENT

Clause Reference:
Part 2, of the Chapter 2

Change summary:
Changes to the definition of parent that is broader, so that it better reflects contemporary care arrangements for vulnerable children. The definition has been updated to reference legal guardians, those who have legal custody and those who act on behalf of the child (within parameters as defined).

Why this change is proposed:
This change relates to the provision of consent for children and young people in the context of care and treatment of mental health under the Act.
The proposed changes protect the rights of children and young people to access timely mental health services, by recognising a broader range of carers who the child or young person may lawfully rely on in the provision of consent to treatment and asses.
The amendments will also remove unintended consequences of the current drafting, which requires "each parent" of the child to consent to the withdrawal of consent – even where all parents may not be available or able. Importantly, the amendments retain the protections originally intended by section 9(3), for example, by preventing children in joint custody arrangements being pulled in and out of treatment.
This relates to the provision of consent for young people whose consent needs to be obtained by another person that is defined under this section.
Note that the *Children, Young Persons and their Families Act 1997* outlines the powers and duties of the Tasmanian Government in relation to children under guardianship or in custody or the (relevant) Secretary generally.

Links to:

Outcome 10 – the Act is not operating effectively to facilitate treatment for children especially where:

- there is no parent available or willing to provide consent
- lack of clarity around who can provide consent to assessment or treatment for a child who lacks decision-making capacity
- lack of oversight available to children who are assessed or treated with the informed consent of a parent
- lack of coherence in the Act's provisions that relate to children.

MENTAL HEALTH ACT 2013 – MEANING OF MENTAL ILLNESS

Clause Reference:

Section 4 – Meaning of Mental Illness

Change summary:

Meaning of Mental Illness has been updated specifically under clause (d) that outlines what is not considered a mental illness.

This clause now includes that a mental illness does not include current or past expression of, or failure or refusal to express, a particular sexual preference or orientation, or gender identify or expression.

The other clauses relating to what is not considered to be mental health remain unchanged in the Act.

Why this change is proposed:

The Act was previously silent on the matter of gender identity or expression in relation to the definition of mental illness. These changes assist to ensure the Act is inclusive and that it remains contemporary.

Links to:

Outcome 7: The treatment framework under the Act needs to be clearer in respect to circumstances for protective custody provisions, or when is under an Assessment Order and when they may be given emergency treatment, as well as the role and purpose of treatment plans.

Outcome 4 - The meaning of mental illness set out in Section 4 is operating as intended and is easy to understand and apply, but it could be made easier.

Outcome 2: The Government will also consider amendments to ensure that the Mental Health Service Delivery Principles remain contemporary.

MENTAL HEALTH ACT 2013 - TREATMENT

Clause Reference:

Section 6 (d) – Meaning of Treatment (and several other section within the Act).

Change summary:

The terms 'examine', 'monitor' and 'evaluate' have been removed and replaced with 'assess' wherever appropriate to do so.

Why this change is proposed:

The aim is to simplify the definition of Treatment in the Act because the current variety of terms used was reported as confusing by some people responding to the Act Outcomes Review consultation process.

In the Review Outcomes Report, these terms were reported to be confusing and used interchangeably. With the aim of simplifying the Act, the term assess is more accurate in part (d) of this section.
All other clauses under Section 6 definition of Treatment remain unchanged.
The terms 'examine', 'monitor' and 'evaluate' have different meanings to 'assess' and therefore only assess is referred to in the definition of treatment, which is a more accurate term in context of the *Mental Health Act 2013*.

Links to:
Outcome 7: The treatment framework under the Act needs to be clearer in respect to circumstances for protective custody provisions, or when is under an Assessment Order and when they may be given emergency treatment, as well as the role and purpose of treatment plans.

MENTAL HEALTH ACT 2013 – CONSENT TO ASSESSMENT OR TREATMENT

Clause Reference:
Section 8 – Meaning of Informed Consent to Assessment or Treatment

Change summary:
The terms 'monitor' and 'evaluate' have been removed and replaced with 'assess'

Why this change is proposed:
In the Review Outcomes Report, these terms were reported to be confusing and used interchangeably through the consultation process. Further, these terms have different definitions, especially in context of the Act.

With the aim of simplifying the Act, the term assess is more accurate in part (d) of this section.
All other clauses under Section 6 definition of Treatment remain unchanged.

The subsection now refers to (d) assess a person's mental state, rather than the use of the terms 'monitor or evaluate'.

Links to:
Outcome 5 – Generally, the Assessment Framework is operating effectively and efficiently however there are aspects that could be better and understood and the framework needs to be more inclusive of consumers and carers.

MENTAL HEALTH ACT 2013 – PROTECTIVE CUSTODY

Clause reference:
Part 2 - Interpretation
Chapter 2, Part 2 – Protective Custody (and other Sections where Protective Custody is referenced)

Change summary:
Protective Custody language is being reworded and terminology has been changed to refer to 'temporary detention for the purposes of assessment'.

Why this change is proposed:

Protective Custody is punitive and patronising language and sometimes confused with police custody, which differs significantly in meaning and application from the protective custody meaning under the *Mental Health Act 2013.*
The terminology 'Protective Custody' is replaced with 'temporary detention, for the purposes of assessment'.
The terminology outlined in Section 17 is the power to temporarily detain person for assessment. This terminology more clearly defines the action and emphasises that it is a temporary state for possible involuntary patients. Further, it is clear that the temporary detainment is for the purposes of assessment and that the person is not yet determined to be an involuntary patient, as they have not yet been assessed.

It was recognised during development of the provisions that the action of taking someone for assessment without their consent is a serious impost on their personal liberty. Accordingly, the word "detention" is proposed so as not to diminish this seriousness, but to ensure that actions taken under to these provisions are transparently/accurately described.

Further, it is made clearer that a Police Officer that may have detained a person and escorted them to an assessment centre, is not required to make a clinical judgement at the time when they are escorting a person for assessment under the Mental Health Act.
There are several amendments that assist to make the provisions clearer, including the escort and handover provisions.

Some provisions remain unchanged such as the requirement for an examination by a medical practitioner at the assessment centre must occur to determine if the person needs to be assessed under the assessment criteria.

The provision for the person to be examined by a medical practitioner within 4 hours of the person arriving at the assessment centre remains, along with the provisions on when a person is no longer required to be detained for the purposes of assessment, including the provision of consent being provided by the person, they no longer appear to need to be assessed under the *Mental Health Act 2013* or the four (4) hour time period has lapsed. Please refer to the Bill for the actual amendment wording.

Essentially the requirements under the Act have not changed in relation to escorting and detaining a person (that may need assessment under the *Mental Health Act 2013)*, but the aim is to make the Act clearer, including the change of language to be more patient focused.

Links to:

Outcome 19: Protective Custody and escort provisions of the Act do not always operate effectively and are not always clear.

MENTAL HEALTH ACT 2013 – INFORMED CONSENT AND CHILDREN

Clause reference:

Section 8 – Meaning of Informed Consent to assessment or treatment
Section 9 – Informed consent for child who lacks capacity to decide on own assessment or treatment

Change summary:

The meaning of informed consent to assessment or treatment has been changed to remove the terminology 'assessment and treatment' and replaced it with assessment, treatment or special psychiatric treatment.

This change means that special psychiatric treatment is now included in this Section of the Act, as it applies to consent.

Why this change is proposed:

This ensures that there is distinction between treatment and special psychiatric treatment as defined under Part 6 Section 122 of the Mental Health Act 2013, as it relates to consent under Section 8. This inclusion helps to further protect involuntary patients by making this distinction in relation to consent.

Links to:

Outcome 10 - The Act is not operating effectively to facilitate treatment for children, especially where:

- there is no parent available or willing to provide consent
- lack of clarity around who can provide consent to assessment or treatment for a child who lacks decision-making capacity
- lack of oversight available to children who are assessed or treated with the informed consent of a parent
- lack of coherence in the Act's provisions that relate to children.

MENTAL HEALTH ACT 2013 – INFORMED CONSENT AND CHILDREN

Clause reference:

Section 9 – Informed consent for child who lacks capacity to decide on own assessment or treatment

Change summary:

Withdrawal of consent by a parent (as per the proposed definition under the Amendment Bill) has been reworded so that it is clearer that the consent withdrawal applies to assessment, treatment or special psychiatric treatment.

How and when the withdrawal of consent may occur is more explicitly outlined in the Amendment Bill.

The withdrawal includes clauses that explains that the informed consent may be withdrawn by another parent if the parent who gave the consent is unable to do so.

A clause is included that explains that consent may be withdrawn during assessment, treatment, or psychiatric treatment and is to be stopped as soon as possible if it is medically safe to do so.

There is a specific clause in the Act that states that there is nothing in the Act that prevents another parent from providing informed consent in accordance with the Act.

For the specific details, the Amendment Bill should be referenced as there are several changes to this Section and they are not all outlined specifically above.

Why this change is proposed:

Children are considered a vulnerable cohort in the community and these amendments further strengthen the rights of children who are being cared for and treated under the *Mental Health Act 2013*, ensuring who may provide consent under the Act and when may be withdrawn is clear and easier to interpret.

Links to:

Outcome 10 - The Act is not operating effectively to facilitate treatment for children, especially where:

- there is no parent available or willing to provide consent
- lack of clarity around who can provide consent to assessment or treatment for a child who lacks decision-making capacity
- lack of oversight available to children who are assessed or treated with the informed consent of a parent
- lack of coherence in the Act's provisions that relate to children.

MENTAL HEALTH ACT 2013 – PRINCIPLES AND RIGHTS

Clause reference:

Part 1 – Rights and Policies (Section 15, 156, 162, 228)
Section 15 – Mental health service delivery principles
Section 15A – Rights of Patients (also Section 62)

Change summary:

The heading in Part 1 has been changed to Rights and Policies.
The Principles in the Act have been updated in Schedule 1. Principles have not been removed; there are expanded, and new principles included.

There is additional information under Section 15 that outlines the parameters of the principles, relating to recording information when a person is exercising responsibilities under the Act.

Section 15A includes updated Rights of Patients and includes rights that apply to all patients under the Act, being voluntary, involuntary, and forensic patients. Additional rights have been included for involuntary and forensic patients specifically while they are admitted to an approved facility.

These provisions are largely those that were contained in sections 62 and 108 of the current *Mental Health Act 2013.* The provisions have been moved to a part newly dedicated to patient rights, in recognition of the importance of the application of rights to all actions under the Act.

Why this change is proposed:

The principles have been updated to ensure they remain contemporary and easier to interpret and apply in a mental health service setting. Some of the principles have been updated to ensure that they are clearer and inclusive of the relevant concepts.

The changes ensure that the rights of all patients under the Act are clearly stated.

There are specific restrictions for patients who are admitted to an approved facility, therefore additional rights must be clearly stated in the Act.

For example, the updated section includes the basic human rights that are present in the current Act but they have been extended, and also additional rights have been added.

Links to:
Outcome 2: application of the Mental Health Act and service delivery principles by delegated authorities are not always being applied regarding the Mental Health Act delivery principles.

Outcome 11: Provisions of the Act relating to involuntary patient transfers and leaves of absence do not always operate effectively.

MENTAL HEALTH ACT 2013 – ASSESSMENT ORDERS

Clause reference:
Part 3 – Involuntary Patients, Division 1 – Assessment Orders
Section 22 – Who can make an Assessment Order

Change summary:
Section 23 has been removed; this section previously required that a prescribed officer under the *Mental Health Act 2013* may apply for assessment order. The making of an Assessment Order may be made by any medical practitioner.

The circumstances in which the medical practitioner may make an assessment order in respect of a person has been updated, which removes the requirement for the medical practitioner to have completed an examination. Rather, the medical practitioner must be satisfied that the person needs to be assessed against the assessment criteria. The need for the medical practitioner to have made reasonable attempt to have the person assessed with informed consent remains an important element of this provision. That is, assessing a person as an involuntary patient under the *Mental Health Act 2013* remains the last preference. The provisions under this section for children remain in the Act.

A further change relating to where and how the patient may be accommodated has been updated. The addition of the word 'available' has been added to Section 24 (3) (b) and Section 27 (4) (b).

Please note there has been no change to the Assessment Criteria under Tranche 1 amendments.

Why this change is proposed:
Making a person an involuntary patient under the *Mental Health Act 2013* remains the last preference in the care and treatment of people with mental health issues.

The removal of the requirement for application of Assessment Order has occurred because it has been deemed to be an unnecessary step in the process that does not add value to the person's potential care and treatment and is rarely used in a service setting.

There are several clauses that remain unchanged.

For example, the making of an assessment order remains reviewable by the Tribunal. The Assessment Order ceases to have effect 24 hours after it was made, and the reasons why remains unchanged.

Links to:
Outcome 5: Generally, the Assessment Framework is operating effectively and efficiently, there are aspects that could be better and understood and the Framework needs to be more inclusive of consumers and carers.

MENTAL HEALTH ACT 2013 – URGENT CIRCUMSTANCES TREATMENT

Clause reference:
Division 4 – Urgent Circumstances Treatment
Section 55 – Urgent Circumstances Treatment

Change summary:
There have been changes to clause (1) in Section 55 to state that the urgent circumstances treatment as being urgently needed in respect of the patient.

Further, clause 2 has been reworded however, the intent of this clause has not fundamentally changed.

Why this change is proposed:
The current wording is confusing and duplicative and the use of the words "patient's best interests" a now considered to be more patronising than informative. The change to clause 1 are proposed so that an approved medical practitioner (AMP) may only authorise the treatment as being urgently needed in respect of the patient.

Clause 2 further outlines the treatment being necessary for specific reasons, including being necessary for the patient's health or safety, or the safety of other persons, and waiting for Tribunal approval would compromise outcomes and effectiveness of the treatment.

Treatment is a defined term under the Act and has a very specific meaning, including that it is a necessary professional intervention in the context of the person's mental illness. Rather than restating these elements in the urgent circumstances treatment provisions, it is considered simpler, yet equally robust, to rely on that definition.

Obligations for the approved medical practitioner remains present in the Act.
The boundaries and requirements for the Urgent Circumstances Treatment remain unchanged to what appears in the current version of the Act.

Links to:
Outcome 6: Provisions for Assessment Orders are not operating effectively and are not easy to understand and apply.

Outcomes 7, 8 and 9: The Government will amend the Urgent Circumstances treatment provisions of the Act (sections 55 and 87) to make them easier to understand and to ensure that they may more clearly be used for a person who has not yet been diagnosed with a mental illness or assessed in respect to this.

MENTAL HEALTH ACT 2013 – SECLUSION AND RESTRAINT

Clause reference:
Division 5 – Seclusion and restraint
Section 56 – Seclusion (and Division 2 – Treatment of Forensic Patients, Section 94)
Section 57 - Restraint

Change summary:

These provisions have been amended to change to seclusion and restraint medical review and time limits.

The changes align with the intent the Act; being that the least restrictive practices should be used where possible. Current authorisations and approvals remain.

The proposed Seclusion and the Restraint provisions include:

- 15 minute interval clinical monitoring remains as a requirement to be completed by a nursing staff
- 3 hour maximum authorisation of seclusion or restraint
- One extension of a further three hours may be authorised, resulting in total authorisation time of 6 hours.
- In the unlikely event that seclusion/restraint remains necessary after the total 6 hours, a medical practitioner or approved nurse is not prevented from recommencing the authorisation process; and
- the medical practitioner or approved nurse will be required to manage any such consecutive restraint or seclusion events in accordance with standing orders issued by the Office of the Chief Psychiatrist. These standing orders will ensure appropriate oversight and reporting for any such critical events.

This applies to Forensic patients as well under Section 94.

The delegated authorities under the Act as they relate to the application of these provisions have not been amended.

Why this change is proposed:

Seclusion and restraints are some of the most restrictive mental health practices available under the Act and are applied only when necessary. Therefore, it is important that the Act ensures that these practices can be applied simply and with a continued focus on the patient's wellbeing. The changes in the Act aim to meet these policy objectives.

This section has been amended significantly as it was reported in the Review Outcome report as being confusing and difficult to interpret and therefore problematic to apply in a service setting. It is intended that the updated seclusion and restraint provisions will be easier to interpret and apply.

Included is a reduction of the length of the seclusion and restraint time that may be authorised that ensure that the patient is less likely to be secluded or restrained longer than is necessary. In Tasmania, there are few reported authorised seclusions that are over 4 hours in duration. The proposed legislative framework will support to minimise the time that patients are placed in seclusion or restraint, where possible.

Links to:

Outcome 18: Seclusion and restraint provisions of the Act are not operating effectively and efficiently.

MENTAL HEALTH ACT 2013 – TRANSFERS AND PATIENT MOVEMENTS

Clause reference:

Division 6 – Patient movements in respect of approved hospitals
Section 59 – Transfer of involuntary patients between approved hospitals

Change summary:

An additional reason at Section 59, clause c) has been added so that patients may be transferred between approved hospitals (within Tasmania) for another prescribed reason.

Why this change is proposed:

Practically, there may be reasons that a patient needs to be relocated to different approved hospital while a patient under the *Mental Health Act 2013*. For example, a patient may be admitted in a region where they do not normally reside, or not close to their support network (including carers, families, and friends). The current Act does not allow an intra-state transfer to an alternative approved hospital to occur. The new clause will rectify this omission in the Act.

Links to:

Outcome 11: Provisions of the Act relating to involuntary patient transfers and leaves of absence do not always operate effectively.

MENTAL HEALTH ACT 2013 – PATIENT LEAVE

Clause reference:

Section 60 – Leave of absence from approved hospital

Change summary:

The requirement for a leave request to be made in writing has been removed.
Patient leave from an approved hospital may be made by request by the patient or a person who has a genuine interest in the patient's welfare, verbally or otherwise.
The request must be recorded on the patient's clinical record by the person in receipt of the request, whether made verbally or otherwise.

Other leave provisions under this section remain unchanged, including the maximum leave approval of 14 days.

Clause 13 outlines the leave refusal has been updated to reflect the above amendments.

Why this change is proposed:

It is deemed an unnecessary step that a patient must request leave in writing on an approved form. These changes do not remove the requirement to provide the reasons for the leave request, by the person requesting the leave.

Links to:

Outcome 11: Provisions of the Act relating to involuntary patient transfers and leaves of absence do not always operate effectively.

MENTAL HEALTH ACT 2013 – ADMISSIONS AND STATEWIDE MENTAL HEALTH UNIT

Clause reference:

Division 8 – Admission of involuntary patient to Statewide Mental Health Unit (SMHU).
Section 63 - Admission
Section 64 – Admissions procedure, extensions, and transfer

Change summary:

The changes allow for an involuntary forensic patient (whose Order has expired) to remain in the SMHU as an involuntary civil patient without admission to an approved facility, such as a hospital, as the interim step.

Why this change is proposed:

There are some situations where a forensic patient whose orders are about to expire, is assessed as needing to remain in the SMHU as a civil patient, rather than become a civil patient in the community due to ongoing mental health care and treatment needs. The changes remove the unnecessary bureaucratic processes and ineffective use of resources where a forensic patient must be transported and admitted to an approved hospital before being transported back to a SMHU for admission as a civil patient.

As the current Act includes these unnecessary processes, the amendments aim to improve patient care and treatment continuity due to limited transportation where the patient needs to remain at the SMHU as a civil patient rather than a forensic patient.

Further, these changes improve security issues through removal of unnecessary patient transport.

Links to:

Outcome 13: Act provisions for the admission and detention of people to the secure mental health unit are not operating effectively in all cases.

MENTAL HEALTH ACT 2013 – NOTIFYING VICTIMS OF FINAL RELEASE OF FORENSIC PATIENTS IN THE COMMUNITY

Clause reference:

Section 119 – Notifying victims of final release of forensic patients

Change summary:

Notifications to victims relating to final release of a forensic patient can occur as soon as practicable when a patient is released from an Order while in the community.

Why this change is proposed:

This allows the Statewide Mental Health Unit (SMHU) to make notifications to victims as soon as practicable where the patient is not within the SMHU at the time of release. The current Act does not allow this as it states the notification must occur before the Order release, but this is not possible when the patient is being treated and monitored in the community.

Links to:

Outcome 13: Act provisions for the admission and detention of people to the secure mental health unit are not operating effectively in all cases.

MENTAL HEALTH ACT 2013 – OFFICIAL VISITORS PROGRAM

Clause reference:
Part 2 – Official Visitors

Change summary:
Section 156 (1) (h) has been amended to include the controlling authority of an approved facility so that the Principle Official Visitor may raise matters of particular concern directly with this authority as well as the Minister and the Chief Psychiatrist.

Further, Under Section 157 additional functions have been included that will allow the Principle Official Visitor to check that the additional requirements in relation to a child are complied with by the relevant mental health service.

Section 163 includes a new clause that allows an Official Visitors to access a patient's records (including clinical records) in relation to concerns about a patient's assessment, treatment and care. These amendments include children and young people.

Why this change is proposed:
It is intended that the proposed amendments to include the Tribunal provides additional protection to involuntary patients who may receive a service that is not in harmony with the objects of the Act by including the Tribunal in this section.

The policy intent is that these amendments will allow the controlling authority to become aware of any matters discussed with patients in a timely manner so that it may be addressed, only if appropriate to do so as determined by the relevant authority.

The changes to Section 161 have been included as the Act was previously silent on this matter and this amendment assists to strengthen the rights of children and young people. The Tribunal are also included as an authority who may raise matters of concern in relation to children or young people.

Links to:
Outcome 24: Provisions of the Act for the appointment, powers and functions and other matters associated with Official Visitors are operating effectively apart from minor changes.

MENTAL HEALTH ACT 2013 – REVIEW TIMEFRAMES

Clause reference:
Section 182 – Review of involuntary admission to Statewide Mental Health Unit (SMHU)

Change summary:
The change has been made to amend the time the Tribunal has to review the admission to a SMHU from three (3) days to seven (7) days.

Why this change is proposed:
This change has been made to align the review timeframes to other requirements in the Act in relation to the Tribunal and the requirements to review of a refusal to return a forensic patient to an external custodian and the review of admission to SMHU of prisoner or youth detainee.

Links to:
Outcome 1 – The Government will consider amendments to the Act to more clearly link the Act's objects to its operational provisions and to make it easier to understand.