

Mental Health and Wellbeing Act 2022

Briefing session to support implementation

August 2023

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Department
of Health

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1. Session overview

Today's session will cover



1.

Introduction

2.

Act principles

3.

New enhanced
consumer rights
& protections

4.

Compulsory
treatment

5.

Information
sharing
principles

6.

Key messages
& takeaway's

Introduction

It responds to recommendation 42 of the Royal Commission into Victoria's Mental Health System.

It builds upon but also replaces the *Mental Health Act 2014*.

The *Mental Health and Wellbeing Act 2022* comes into effect on September 1, 2023



The Act lays the foundations for a new system:

- It resets the legislative foundations of Victoria's mental health and wellbeing system.
- It establishes key entities in the new system architecture and includes broader regulation to support a safer, more inclusive system.
- A wider range of mental health and wellbeing service providers are bought under the Act.

Let's take a quick look at the comparison between the Mental Health Act 2014 and Mental Health and Wellbeing Act 2022

Comparison between MH Act 2014 and MHW Act 2022



Definitions, scope, objectives and principles

- Mental Health and Wellbeing Service Provider' is defined more broadly to include a wider range of service providers than were regulated under the MHA
- New requirements for the provision of 'appropriate supports' to assist a person to understand information, communicate and make decisions
- Strengthened and more comprehensive Mental Health and Wellbeing Principles with higher threshold for consideration



Compulsory assessment and treatment

- Maximum duration of a community treatment order reduced from 12 months to 6 months



Protection of rights

- Advance statements of preference (formerly called advance statement)
- Nominated support person (formerly called nominated person) role
- Increased obligation on designated mental health services
- A new opt out model of non-legal mental health advocacy



Mental Health and Wellbeing Commission

- The Mental Health and Wellbeing Commission is established
- The jurisdiction of the Mental Health and Wellbeing Commission extends to all mental health and wellbeing service providers.
- Commission to play a key role in system wide oversight of quality and safety
- An "own motion" investigation power



Treatment and interventions

- New Decision making principles for treatment and interventions
- New requirement for written reasons to be provided whenever a treatment preference outlined in an advance statement of preferences is overridden
- Introduction of regulation of chemical restraint as a type of restrictive intervention



General

- New provisions in relation to information sharing
- A requirement for a review of the Act

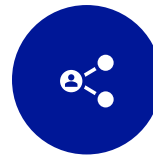
What are the changes?



Inclusion of a **Statement of Recognition** of Aboriginal people and acknowledgement of the treaty process



New objectives that aim to achieve the **highest attainable standard** of mental health and wellbeing for Victorians



It puts people with a **lived and living experience**, their families, carers and supporters **at the centre** of the system



Promotes **supported decision making and the agency and autonomy** of people living with mental illness



Regulates and includes **safeguards in the use of compulsory treatment** and restrictive interventions



Establishes **new roles and entities** for the governance and oversight of the mental health and wellbeing system



Introduces new expectations in relation to **information sharing**



Aims to establish the foundations of a **health-led response** to mental health crisis.



Establishes **rights-based principles** that apply to all mental health and wellbeing service providers

Definitions and terminology



Mental Health and Wellbeing Service Provider

is defined more broadly to include a wider range of service providers than were regulated under the previous Act.



Meaning of “mental illness”

has had updates to language and clarification that a person experiencing or having experienced psychological distress is not a reason to consider that the person has mental illness.



Proper consideration

(we will cover in detail later in the presentation)



Advance statements of preference

(formerly called advance statement)



Nominated support person

(formerly called nominated person)



Care and Control

is used to describe the necessary detention of a person for the purpose of:

- preventing serious and imminent harm and arranging for an examination (previously known as a s351 apprehension); or
- providing transport.

Objectives and principles

NEW:

The Act establishes new **rights-based** objectives and principles which apply to all mental health and wellbeing service providers under the Act

The objectives set out the aspirations for the Act.

- support the dignity and autonomy of people living with mental illness or psychological distress
- ensure people are involved in decisions about their treatment, care and support
- recognise the role of families, carers and supporters and
- ensure the service system responds to the diverse needs of Victorians

Service providers will be required to:

- make all reasonable efforts to comply with the mental health and wellbeing principles when exercising a function under the Act
- give **proper consideration** to the mental health and wellbeing principles when making a decision and include information in annual reporting about actions taken to give effect to one or more of principles.

Non-compliance with the principles is a new ground for complaint to the MHW Commission.

The principles should underpin everything you do.

2. Act principles

Act principles

1. People's rights, dignity and autonomy are to be promoted and protected.
2. People living with mental illness or psychological distress are to be provided with access to a diverse mix of care and support services.
3. Mental health and wellbeing services are provided with the least possible restriction of a person's rights, dignity and autonomy with the aim of promoting their recovery and full participation in community life.
4. People (including compulsory patients) are supported to make and participate in decisions about their assessment, treatment and recovery, with the views and preference of the person receiving mental health and wellbeing services to be given priority.
5. Families, carers and supporters (including children) of people receiving mental health and wellbeing services are to be supported in their role in decisions about the person's assessment, treatment and recovery.
6. The lived experience of a person with mental illness or psychological distress and their carers, families and supporters is to be recognised and valued.
7. The medical and other health needs of people living with mental illness or psychological distress are to be identified and responded to.
8. People receiving mental health and wellbeing services have the right to take reasonable risks in order to achieve personal growth, self-esteem and overall quality of life.
9. The health, wellbeing and autonomy of children and young people receiving mental health and wellbeing services are to be promoted and supported.
10. The diverse needs and experiences of people receiving mental health and wellbeing services are to be actively considered, with services provided in a manner that is safe, sensitive and responsive.
11. The specific safety needs or concerns that a person may have based on their gender are to be considered and services provided in a manner that is safe and responsive to these needs and concerns.
12. Mental health and wellbeing services are to be culturally safe and responsive to people of all racial, ethnic, faith based and cultural backgrounds.
13. The needs, wellbeing and safety of children, young people and other dependents of people receiving mental health and wellbeing services are to be protected.

3. New and enhanced consumer rights and protections

Support decision making

Supported decision making is about assisting people to make their own decisions, rather than making decisions for them



- The mental health and wellbeing principles reflect a focus on supported decision making and a right for individuals to make decisions that involve risk ('dignity of risk')
- The Act includes legal mechanisms to promote and assist communication between practitioners and people with mental illness and their families and carers, and to support people receiving mental health and wellbeing services to make decisions about their assessment, treatment and care.
- The focus on supported decision making is reflected in provisions relating to capacity and consent to treatment which include a requirement that a person is presumed to have capacity to give consent to treatment.
- The Act includes specific mechanisms that are designed to promote supported decision making including advance statements of preferences, nominated support persons and a legislated opt-out model of non-legal mental health advocacy

Enhanced rights protections

Advance statement of preference

(formerly called advance statement) may include a broader range of preferences relating to treatment, care and support needs and witnessing requirements have been eased

Nominated support person

(formerly called nominated person) this role is clarified as focused on advocating for the views and preferences of the patient and supporting them to communicate and make their own decisions. Witnessing requirements have been eased

Increased obligation on designated mental health services

to determine if a statement or nomination is in place, to make all reasonable efforts to give effect to an advance statement of preferences and/or to support a nominated support person

Requirements to provide Statements of Rights

strengthened obligations to take all reasonable steps to ensure rights are understood and additional requirement to provide Statement of Rights to persons admitted to bed-based designated mental health services

Provisions related to second psychiatric opinions

is a new requirement that a patient is automatically provided with written reasons when recommendations of a second psychiatric opinion are not adopted

New requirement for written reasons

to be provided whenever a treatment preference outlined in an advance statement of preferences is overridden

Opt-out non-legal mental health advocacy

NEW:

A new opt-out model of non-legal mental health advocacy has been established



- **Victoria Legal Aid (VLA) will deliver the non-legal mental health advocacy service** building on the Independent Mental Health Advocacy Services that has been running since 2015.
- To support an opt-out approach where advocates make contact with people who are receiving compulsory treatment notifications must be made to VLA at defined points.
- In most cases this **notification will occur automatically** on a daily basis when information is entered into CMI. Services need to ensure that data is entered in a timely way.
- The **Chief Officer will issue protocols setting out timeframes and mechanisms for notifications** as well as information about communicating with consumers, families, carers and supporters about opt-out non-legal mental health advocacy.
- An **opt-out register will be available** for people to register that they do not want to be offered or provided with non-legal mental health advocacy services.

Safeguards

The **Mental Health and Wellbeing Commission** has been established to provide accountability and leadership across the mental health and wellbeing system.

This will include taking on the existing complaints-handling function of the Mental Health Complaints Commissioner and will:

- allow complaints from families, carers and supporters in relation to their experiences in these roles
- more closely align processes and powers with those available to the Health Complaints Commissioner under the *Health Complaints Act 2016*
- explicitly allow for complaints about a failure to comply with obligations in relation to principles

The **Chief Psychiatrist's** jurisdiction is defined to include:

- designated mental health services;
- mental health and wellbeing service providers that provide mental health and wellbeing services in custodial settings; and
- any other prescribed entity or class of entity.

The Chief Psychiatrist will continue to issue guidelines, standards and practice directions, including in relation to chemical restraint as a new requirement under the Act.

The operation of the **Mental Health Tribunal** and the structure of the orders they make have not changed.

4. Compulsory treatment

Decision-making principles

The decision-making principles are in addition to the general principles and objectives

The care and transition to less restrictive support principle

states that the aim of compulsory assessment and treatment is to promote recovery and transition a patient to less restrictive treatment, and that they should receive comprehensive, compassionate, safe and high-quality services to achieve this goal.

The balancing of harm principle

states that compulsory assessment and treatment or restrictive interventions must not be used unless the serious harm or deterioration to be prevented is likely to be more significant than the harm that may result from its use.

The consequences of compulsory assessment and treatment and restrictive interventions principle

establishes that compulsory treatment and restrictive interventions significantly limit a patient's human rights and can cause harm, including serious distress and disruption to a person's life.

The autonomy principle

states that the will and preferences of a person are to be given effect to the greatest extent possible in all decisions about assessment, treatment, recovery and support, including those decisions relating to compulsory assessment and treatment.

The no therapeutic benefit principle

states that restrictive interventions offer no inherent therapeutic benefit to a person.

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Proper consideration

Consideration of the mental health and wellbeing principles must be more than a token, tick box or formality.



What does this mean?

Proper consideration is the same test that applies to consideration of rights under the *Charter of Human Rights and Responsibilities Act 2006*.

In practice, what this means will vary according to the context.

In circumstances where a decision is urgent or needs to be made under pressure, what is “proper consideration” will be different to circumstances where there is more time for a decision or where the impact of a decision may be particularly significant.

It does not mean that individual decisions must always be informed by legal advice, or that a sophisticated formula or process must be followed (although this may be required for some very complex decisions).

Treatment and restrictive interventions

NEW:

There are new **decision making principles** which apply to the use of compulsory assessment and treatment and restrictive interventions.

Decision makers must give proper consideration to these principles.

Provisions related to the use of restrictive interventions:

- obligation on providers to aim to reduce the use of restrictive interventions with the eventual aim of eliminating their use
- requirements to document alternatives tried or considered
- to review the use of restrictive interventions and to offer an opportunity for the person subject to these interventions an opportunity to participate in the review
- introduction of regulation of chemical restraint as a type of restrictive intervention

NEW: Maximum duration of a community treatment order is reduced from 12 months to 6 months.

Assessment orders

NEW:

The Mental Health and Wellbeing Act 2022 introduces a new requirement that assessment orders **identify the responsible designated mental health service.**



A **registered medical practitioner** or an **authorised mental health practitioner who makes an assessment order** for a person **must identify the designated mental health service** that will be responsible for the person's assessment

At any time before a person is examined by an authorised psychiatrist, a registered medical practitioner or an authorised mental health practitioner, they may vary an Assessment order to specify a different designated mental health service which is to be responsible for assessing the person.

Chemical restraint

Chemical restraint is defined as *the giving of a drug to a person for the primary purpose of controlling the person's behaviour by restricting their freedom of movement but does not include the giving of a drug to a person for the purpose of treatment or medical treatment.*

- Reporting the use of chemical restraint will be required.
- Clinical mental health service providers will be required to advise the Chief Psychiatrist of the use of restrictive interventions including the use of chemical restraint.
- Clinical mental health service providers need to seek authority from the Authorised Psychiatrist to use chemical restraint.
- A new form has been developed for reporting: MHWA 143 Authority for chemical restraint.

Care and control

NEW:
Section **351** is now
section **232**

Section 232 can only be enacted by Police and Protective Service Officers



Authorised persons will now have the capacity to release a person from care and control when they are no longer at risk of serious and imminent harm



Health professionals who can accept care and control at the designated mental health service or hospital, are a registered medical practitioner, an authorised mental health practitioner or a registered nurse.



Care and control must be accepted as soon as is reasonably practicable and safe.



5. Information sharing principles

Information sharing

NEW:

New provision that information must not be disclosed if there is a risk that a person may be subject to family violence or other serious harm

New provisions in relation to information sharing are introduced, including to:



introduce new principles to clarify the purpose and expectations in relation to information sharing



reflect the broader service system by allowing information sharing with Ambulance Victoria



specify who can access information from the current electronic health information system (CMI/ODS) and the scope of such access



enable a consumer to contribute a statement on their health information where a request to correct information has been made under the Freedom of Information Act 1982 or the relevant Health Privacy Principle and the provider has refused to make the correction



oblige mental health and wellbeing service providers to share information with family, carers or supporters at defined points of care (such as admission or discharge) when a consumer has consented to this disclosure.

6. Key messages and takeaway's

Summary

**It's not the Act itself
that drives cultural
change or behavioural
change, but what we
do with the Act and
how we all carry that
forward**



The new Act supports changes underway to transform Victoria's mental health system. The changes will deliver a new system where Victorians receive the care they need early and in their community.

It puts consumers, carers, families and supporters at the centre of the mental health system.

The Mental Health and Wellbeing Act 2022 places importance on the principles that will underpin the work we do in the system.

Helpful resources

[Website/
Handbook/](#)

Act
Implementation
Leads

Enquiry form

E-learning
training
modules



Department's
daily online
information
sessions

Video quick
guides

Fact sheets,
FAQs,
stakeholder kits
& posters

New learning
package to aid
face-to-face
training

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Things to consider

How can you help
prepare your
organisation for the
changes taking place
on 1 September 2023?



How might you communicate these changes to staff to assist with implementation?

Consider the readiness of your workplace – **have you updated relevant policies, procedures and guidelines?**