

Mental Health and Wellbeing Act 2022

Information for Mental Health and Wellbeing Service Providers

OFFICIAL

The information in this fact sheet reflects the *Mental Health and Wellbeing Act 2022* (the Act) as amended by the *Mental Health and Wellbeing Amendment Act 2023* (Amendment Act). The Amendment Act makes amendments to the Act, including aspects of the definition of 'mental health and wellbeing service' and 'mental health and wellbeing service provider'.

Victoria's new *Mental Health and Wellbeing Act 2022*

Victoria's new *Mental Health and Wellbeing Act 2022* (the Act) commences on 1 September 2023. The new Act replaces the *Mental Health Act 2014*.

The Act has strengthened mental health and wellbeing principles to guide service providers to support the dignity and autonomy of people living with mental illness or psychological distress.

Mental health and wellbeing service providers must make all reasonable efforts to comply with the mental health and wellbeing principles and to give proper consideration to those principles when making a decision under the Act. Complaints can be made to the new Mental Health and Wellbeing Commission if a service provider fails to comply with these obligations.

Mental health and wellbeing services

A **mental health and wellbeing service** is a service performed for the primary purpose of —

- improving or supporting a person's mental health and wellbeing; or
- assessing, or providing treatment, care or support to a person for mental illness or psychological distress; or
- providing care and support to a person who is a family member, carer or supporter of a person with mental illness or psychological distress.

The Act also allows for the making of regulations to prescribe a service or a class of service to be a mental health and wellbeing service. No regulations of this kind have been made.

The Act specifies that a non-legal mental health advocacy service is not a mental health and wellbeing service and allows for the making of regulations to exclude other services or classes of services from this definition. The Mental Health and Wellbeing Regulations 2023, specify that a mental health and wellbeing advocacy service is not mental health and wellbeing service. This would for example mean that the individual and systemic advocacy services provided by peak bodies are not mental health and wellbeing services for the purpose of the Act.

Mental health and wellbeing service providers

A **mental health and wellbeing service provider** means an entity (other than an individual) that—

- receives funding –
 - directly from the Victorian State government (for example, funding from the Department of Health – Mental Health and Wellbeing Division) for the primary purpose of providing *mental health and wellbeing services*; or
 - from another entity that received funding from the Victorian State Government for the primary purpose of providing *mental health and wellbeing services* and passes on a portion of that funding for a purpose consistent with its arrangement or agreement with the State; and
- employs or engages a *mental health and wellbeing professional* in connection with providing the mental health and wellbeing services.

The Act allows for the making of regulations to exclude an entity or a class of entity from the definition of a mental health and wellbeing service provider. The Mental Health and Wellbeing Regulations 2023 provide that the following are not mental health and wellbeing service providers under the Act –

- schools, children’s services, and education and care services, along with the providers of services to children, students or staff of these services.
- the Department of Education
- a court or tribunal, or other entity that exercises a function that is of a judicial or quasi-judicial nature
- a provider of a workplace mental health and wellbeing support service (such as an employee wellbeing support program) to the extent of the provision of that service.

Mental health and wellbeing professional means a person who performs duties in connection with the provision of mental health and wellbeing services and who is:

- a registered medical practitioner; or
- a registered psychologist; or
- a registered nurse or enrolled nurse; or
- a registered paramedic; or
- a registered occupational therapist; or
- a social worker of a prescribed class¹; or
- a counsellor of a prescribed class²; or
- a person employed or engaged in a prescribed role that requires the person to have personal experience with mental illness or experience as a carer of a person who is living with mental illness; or
- a psychosocial support worker of a prescribed class; or
- an allied health professional of a prescribed class.

¹ The Mental Health and Wellbeing Regulations 2023 provide that a social worker of a prescribed class is a social worker in Victoria that has a qualification that makes the person eligible to be a member of the Australian Association of Social Workers.

² The Mental Health and Wellbeing Regulations 2023 provide that a counsellor of a prescribed class is a counsellor who has completed a university degree of Bachelor of Counselling or Master of Counselling; and is a member of the Australian Counselling Association; or the Psychotherapy and Counselling Federation of Australia.

Mental health and wellbeing service provider obligations under the Act

Mental health and wellbeing 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 under the Act
- provide safe, person-centred mental health and wellbeing services
- foster continuous improvement in the quality and safety of the care and mental health and wellbeing services they provide
- comply with specific provisions of the Act related to –
 - the sharing of health information
 - seeking informed consent before treatment is provided under the Act-
 - supporting consumers, family members, carers, guardians, nominated support people and complainants to understand information when the provider is required under the Act to communicate that information to any of these people.
- establish procedures for receiving, managing and resolving complaints about the provision of mental health and wellbeing services. These procedures must comply with any complaint handling standards prepared by the Mental Health and Wellbeing Commission.

In addition, where a mental health and wellbeing service provider is required under any Victorian law to prepare an annual report, that provider must include in its annual report information about actions taken to give effect to one or more of the principles.

Mental health and wellbeing service providers will be within the scope of governance or oversight by the:

- Mental Health and Wellbeing Commission
- Mental Health and Wellbeing Chief Officer
- Secretary of the Department of Health.

A sub-set of mental health and wellbeing service providers will also be designated mental health services³. These are services that may provide compulsory assessment and treatment. Designated mental health services have additional obligations under the Act.

Along with mental health and wellbeing service providers that provide mental health and wellbeing services in correctional settings, designated mental health services will also be within scope of oversight by the Chief Psychiatrist.

³ A designated mental health service is a public hospital, public health service, denominational hospital, privately operated hospital or a private hospital within the meaning of section 3(1) of the Health Services Act 1998 that has been prescribed to be a designated mental health service in the *Mental Health and Wellbeing Regulations 2023*, or the Victorian Institute of Forensic Mental Health; a service that is temporarily declared to be a designated mental health service under the Act, or a declared operator of Youth Mental Health and Wellbeing Victoria.

Services new to the Mental Health and Wellbeing Act

The new Act broadens the scope of organisations regulated under mental health legislation, reflecting the more inclusive end-to-end service system envisaged by the Royal Commission.

Some services receive funding from multiple sources and for multiple purposes, including funding from the Victorian Government for mental health and wellbeing services. Where a service provider has multiple funding streams, only the mental health and wellbeing services they provide will be subject to regulation under the Mental Health and Wellbeing Act.

For example, only complaints about mental health and wellbeing services may be made to the Mental Health and Wellbeing Commission not any other services offered by that provider. Health information sharing requirements under the new Act would only apply to mental health and wellbeing service provision.

An alcohol and drug service would only be a mental health and wellbeing service and be within the scope of the Act if its primary purpose relates to mental health and wellbeing, for example, if it is an integrated service to provide alcohol and drug support to people experiencing mental illness or psychological distress. If an alcohol and drug service is a general service accessible to anyone, it would not come within the scope of the Act as the primary purpose of the service is to address a person's alcohol and drugs needs and not mental health and wellbeing.

More information

The Department of Health is working with peak bodies and stakeholders to develop information about the new Act.

The department has funded Mental Health Victoria (MHV) to provide education, training and supports for primary care providers, non-acute and community sector services so all front-line workers, managers and staff can better understand the new Act.

MHV will deliver sector forums, a regional roadshow and roll out of e-learning modules to support the mental health and wellbeing sector.

Updates will be published on the [Mental Health and Wellbeing Act](https://www.health.vic.gov.au/mental-health-and-wellbeing-act) page <<https://www.health.vic.gov.au/mental-health-and-wellbeing-act>> on the Health Department website.