Mental Health and Wellbeing Act 2022

Briefing session to support implementation for the medical workforce

August 2023

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VICTORIA State Government | Department of Health

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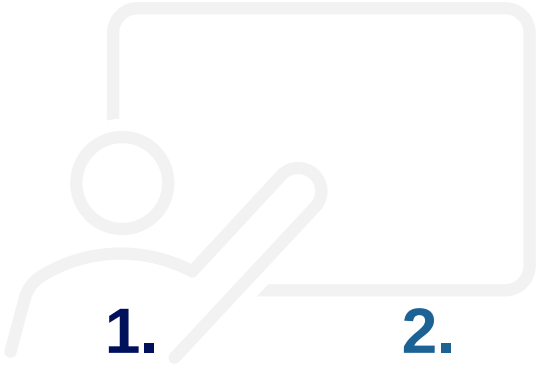
Today’s session will cover



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Introduction	Changes & comparisons between the former Act and new Act	Decision making principles and giving proper consideration	Restrictive Interventions including chemical restraint	Embedding Enhanced Rights and Protections	Helpful resources

1. Introduction

Introduction

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

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 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

2. Changes and comparisons between the Acts

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

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.

They are the foundation for compassionate treatment, care and support and protecting people's rights.

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.

3. 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.

4. Decision-making principles

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 it 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 decision relating to compulsory assessment and treatment.
The no therapeutic benefit principle	states that restrictive interventions offer no inherent therapeutic benefit to a person.

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).

Restrictive interventions

There are some new provisions in the Mental Health and Wellbeing Act 2022 regarding Restrictive Interventions.

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

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.

The Restrictive Interventions – Reporting Directive is now live on the Department of Health website

Chemical restraint continued.

Chemical restraint means ‘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’.

When the primary purpose of administering the medication is to exert control over a person’s movement.

There may be ambiguity when the medication has the effect of both controlling movement and treating the underlying cause. In situations of ambiguity, the primary purpose must be considered.

The documentation in the medical record should outline the rationale for why medication use was or was not recorded as chemical restraint.

The following forms for reporting forms have been developed:

- MHWA 140 Authority for Restrictive Interventions
- MHWA 141 Authority for urgent physical restraint
- MHWA 143 Authority for use of Chemical Restraint
- MHWA 142 Restrictive Interventions Observations to the Chief Psychiatrist

Emergency Departments

The new Act requires clinical mental health service providers to report restrictive interventions, including chemical restraint, in emergency departments.

- The new Act defines a ‘mental health and wellbeing service’. This means that regulation, including the regulation of restrictive interventions, commences when a person seeking or appearing to require mental health services comes into an emergency department of a designated mental health service. This is regardless of whether or not they are on an order.
- A regulation is in the process of being made before 1 September to maintain the status quo for emergency departments by carving out a service provided in an ED of a DMHS. This means that in an emergency department, it is only patients (those on an order) who will be considered to be receiving a mental health and wellbeing service under the Act.
- This regulation is proposed to be time limited and will expire on 31 March 2024. Between now myself and my office will be working closely with services to understand the impacts and requirements of this change and to help operationalise this across all affected services.

5. Reporting obligations & changes for service providers

Regulatory approach of the Office of the Chief Psychiatrist

The Chief Psychiatrist will **continue to work in partnership** with service providers to assist them with understanding and implementing the requirements of the new Act.

The Chief Psychiatrist will do this by continuing to **provide clinical leadership and support** to clinical mental health services with the core objective of promoting the rights of consumers.

The Chief Psychiatrist is providing clear clinical guidance to services to **outline expectations** as they relate to compliance with the Act and associated reporting requirements.

As required by the Act, the Chief Psychiatrist is also issuing **reporting directives and new guidelines**. Some of the new guidelines will be available on the **Chief Psychiatrist's website** — others are coming in the coming days.

The Chief Psychiatrist understands that adapting to the new regulatory environment will take some time and will support clinical mental health services to make the necessary adjustments over the coming period.

Assessment orders and treatment 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.

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

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.

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.

6. Helpful resources

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