

Transport of mental health patients

Powers of authorised persons under the Mental Health and Wellbeing Act 2022 (Vic)

This document is applicable as at 10 November 2023 and supersedes previous factsheets on transport

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Contents

What are transport powers?	1
Who can use transport powers?	2
How should these powers be used?	3
When can these powers be used?	3
What does this mean in practice?	4

What are transport powers?

Transport powers refer to powers associated with transporting a patient to or from a designated mental health service or any other place under section 241 of the *Mental Health and Wellbeing Act 2022 (the Act)*. This is separate to the power to use care and control to respond to a person in mental health crisis in the community, which is found in section 232 of the Act.

All transport powers, including the power to take a person into care and control, must be exercised in accordance with the Act. These powers are intended to be flexible enough to adapt to the varied professional capabilities of different classes of authorised persons, in line with their relevant training and protocols. Please refer to the Act's relevant sections (as cited below) for complete requirements for the exercise of these powers.

In order to transport a person under the Act, authorised persons may:

- **take a person into their care and control** for the purpose of transport (when done in accordance with section 241 and 252);
- **enter premises** where they are satisfied on reasonable grounds the person may be found (when done in accordance with section 246);
- **search a person** if they reasonably suspect that person is carrying something that presents a danger to themselves or anyone else (when done in accordance with sections 247 and 248). The Act incorporates a number of provisions to preserve the person's dignity and privacy during a search. This includes a requirement that the search be conducted by an authorised person of the gender nominated by the person to be searched, wherever it is reasonably practicable in the circumstances (searches must be conducted in accordance with section 248);

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- **seize items** found during a search if the authorised person is reasonably satisfied that the thing presents a danger, either to the person or anyone else (when done in accordance with section 249); and
- **use bodily restraint** if:
 - all reasonable and **less restrictive options have been tried or considered** and have been found to be unsuitable; and
 - the use of bodily restraint is **necessary to prevent imminent and serious harm to the person or anyone else** (when done in accordance with section 250).

Additionally, any authorised person may help another authorised person exercise powers under the Act, including entering premises, searching a person, seizing items and/or using bodily restraint in order to transport a person under the Act.

Who can use transport powers?

All authorised persons may take a patient into their care and control for the purpose of transport to or from a designated mental health service or any other place as provided for under the Act (section 241).

The [health led principle](#) requires that these powers are exercised by authorised health professionals (that is, authorised persons that are not police or protective service officers) wherever it is reasonably practicable in the circumstances, and this is also consistent with the [least restrictive approach principle](#).

In order to provide a health led response and least restrictive approach, **Ambulance Victoria should be the primary contact for providing transport** of patients to or from a designated mental health service.

Police should only be used as a last resort or where the involvement of police is necessary to ensure the safety of any person.

Who is an authorised person?

'Authorised person' describes people with powers to respond to mental health emergencies and provide transport under the Act. Authorised persons are:

- registered paramedics employed by an ambulance service as defined in section 3(1) of the *Ambulance Services Act 1986*; or
- registered medical practitioners employed or engaged by a designated mental health service; or
- authorised mental health practitioners; or
- police officers; or
- protective services officers; or
- members of a prescribed class of person (noting no persons have yet been prescribed).

Who is an 'authorised health professional'?

'Authorised health professional' refers to authorised persons who are not police or protective services officers

Please note: Paramedics do not currently have the ability to take a person in a mental health crisis into care and control in accordance with section 232, however the Act allows for them to be provided via regulation in future. Currently, only police and protective services officers can take a person into care and control in response to a mental health crisis under section 232.

How should these powers be used?

Be health led or health informed

The exercise of powers relating to transport must be **led by authorised health professionals** wherever it is reasonably practicable in the circumstances.

If this is not possible, and it is necessary to request assistance from police or protective services officers, then the exercise of powers must be **informed by an authorised health professional** or other registered medical practitioner, authorised mental health practitioner, registered nurse or registered paramedic wherever reasonably practicable in the circumstances.

Take the least restrictive approach

The exercise of a power by an authorised person must be undertaken in the least restrictive way possible, so far as reasonably practicable in the circumstances to minimise restrictions on the persons rights, dignity and autonomy.

For instance, choosing an ambulance for transportation should be the primary option, reserving the use of a police vehicle only as a last resort. Authorised persons should support the views and preferences of the person with regard to their transport and assessment wherever it is reasonably practicable in the circumstances. **Where a less restrictive action is safe and reasonably available it must be the preferred approach.**

Consider the mental health and wellbeing principles

Whenever authorised persons exercise their powers, they must give proper consideration to the mental health and wellbeing principles in Part 1.5 of the Act. 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 the decision may be particularly significant.

Important: Whether a person poses a serious and imminent risk to themselves or others should be informed by clinical advice as part of providing a health informed response. **If the patient is a serious and imminent risk to themselves or others, please ensure this risk, and the reasons for this risk, are clearly communicated to any authorised persons (including police) assisting in the transport of the person.**

Bodily restraint is a restrictive intervention under the Act. The Act requires any person who exercises powers under the Act, which includes all authorised persons, to aim to reduce the use of restrictive interventions.

When can these powers be used?

Transport powers are used to transport a patient to or from a designated mental health service or any other place as provided for under the Act (section 241). For example, transport of a patient may be required where:

- an **inpatient assessment order is made** and transport is required to get the person to the appropriate designated mental health service for assessment (section 146(3)). This is documented by the person making the inpatient assessment order using:
 - MHW 101 Inpatient assessment order form which remains valid for 24 - 72 hours once made.

- an **inpatient temporary treatment order** is made following an assessment in the community and transport to an inpatient unit is required (section 182(3)). This is documented by the person making the inpatient temporary treatment order using:
 - MHWA 110 Temporary treatment order form which expires 28 days after the order is made.
- there is a **variation to an inpatient order** (from community to inpatient) (section 200(4), 153(2) or 170(1)). This is documented using:
 - MHWA 111 Variation of a temporary treatment or treatment order form which is valid:
 - in the case of a varied temporary treatment order, for 28 days from the day the original order was made; or
 - in the case of a varied treatment order, until the date listed on the order; or
 - MHWA 103 Variation of an assessment order form which is valid for 24 hours after the variation of the order; or
 - MHWA 106 Variation of a court assessment order form which is valid until the date listed on the form.
- there is a variation of a patient's order to enable **transfer to another designated mental health service** (i.e. interfacility transfer) (sections 155 or 223) This is documented using:
 - MHWA 123 Variation of order form to transfer a compulsory patient.
- a patient is **absent without leave** (AWOL) (section 221). This is documented using:
 - MHWA 124 Taking care and control of patient absent without leave form. This is valid until the patient is located and returned to a designated mental health facility, or the original order expires.

What does this mean in practice?

Registered paramedics employed by Ambulance Victoria, registered medical practitioners employed or engaged by a designated mental health service, authorised mental health practitioners, police and protective services officers all have powers under the Act to:

- take a person into care and control for the purposes of transport (in accordance with section 241 and 252).
- enter a premise (in accordance with section 246),
- use bodily restraint (accordance with section 250), and
- search a person and seize items (in accordance with sections 247, 248 and 249).

When providing transport under section 241, involvement of police should only occur where transport by an authorised health professional, or other less restrictive means is not reasonably practicable in the circumstances. If the authorising clinician requesting transport believes the patient is a serious and imminent risk to themselves or others, this risk, including the reasons for this assessment, should be clearly communicated to police or any other authorised persons assisting in the transport of the person.

It is important for the clinician communicating this assessment to be aware that by doing so they are informing the decision making of an authorised person (including police) on the use of bodily restraint, if this is required for the purposes of transport. Bodily restraint is a restrictive intervention under the Act. Wherever there is a less restrictive option this should be preferred.

When determining if bodily restraint is justified under the Act, police should carefully consider clinical advice received in addition to their own assessment of the situation. Where police are satisfied, based on all of the

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information available including clinical advice, that the person is at serious and imminent risk of harm to themselves or others, police may exercise bodily restraint so long as other less restrictive alternatives have been tried or considered and found to be unsuitable. Police are not required to exercise any clinical judgment.

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