

Reforming MENTAL HEALTH LAW

in Victoria

**the Mental Health and Wellbeing Act 2022
Summary and key changes**

Mental Health Legal Centre, August 2023



Reforming

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I acknowledge the Traditional Owners of the land on which we are meeting. I pay my respects to their Elders, past and present, and to the Aboriginal Elders of other communities who may be here today



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MENTAL HEALTH LAW
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Mental Health Legal Centre



Mental Health and Wellbeing Act 2022 (Vic)

- 💡 Metro and regional in person roadshows
- 💡 More substantive training on MHWA – 2023/2024
- 💡 MHT advocacy training for lawyers through Community of Practice and on roadshows

Mental Health and Wellbeing Act 2022

Summary and key changes

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Summary of the Act

Chapter 1 Definitions, scope, objectives and principles	Chapter 2 Protection of rights	Chapter 3 Treatment and interventions
Chapter 4 Compulsory assessment and treatment	Chapter 5 Taking into care and control, transport, transfer and search by authorised persons	Chapter 6 Administration
Chapters 7 & 8 Mental Health Tribunal, community visitors and Mental Health Board	Chapter 9 Mental Health and Wellbeing Commission (including complaints)	Chapters 10-13 Security patients, forensic patients, intensive monitored supervision and interstate application
Chapters 14-16 Vic Institute of Forensic Mental Health, Vic Collaborative Centre & Youth Mental Health & Wellbeing Vic	Chapter 17 Disclosure of health information, supplementary provisions and codes of practice	Amendment Bill The Bill will amend the Act to ensure it operates as intended and can be fully implemented on Sep 1 st .

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Chapter 1

Preliminary definitions, scope, objectives and principles

- Introduces a new definition of mental health and wellbeing professional to recognise the broader range of professionals required to deliver on the Royal Commission’s vision and provide greater certainty about service providers in scope of the Act
- Establishes obligations for providers to provide appropriate support to people to understand and participate in decisions about their treatment, care and support whenever there is an obligation to communicate matters under the Act
- Sets clear expectation that entities will work together to avoid unnecessary duplication and burden
- Incorporates Statement of Recognition and acknowledgement of treaty process
- Establishes new rights based objectives and principles
- Obliges mental health and wellbeing service providers to give proper consideration , and make all reasonable efforts , to comply with the principles
- Provides that, despite any other requirements, information about a person must not be disclosed if there is a risk that a per son may be subjected to family violence or other serious harm

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
Narrow term used to define mental health service provider	Introduces a new broader definition of mental health and wellbeing service providers, which includes a person, organisation or body that: <ul style="list-style-type: none"> • receives funding from the State or Victoria to provide a mental health and wellbeing service; and • engages or employs a mental health and wellbeing professional <p>* Please note this may be subject to technical amendments outlined in the Amendment Bill</p>
Principles	Mental health principles are more comprehensive. There is a higher threshold for consideration of the principles (providers must give proper consideration and must make all reasonable efforts rather than “have regard”). There is an explicit ground for complaint to the Mental Health and Wellbeing Commission in relation to the principles.
Limited communication supports provided to patients under the Act	Introduces a requirement to provide ‘appropriate supports’ to assist a person to understand information, communicate and make decisions. A person must make all reasonable efforts to provide those supports any time the Act requires communication with a consumer or their family members, carers and supporters.



Chapter 2

Protection of rights

- Sets out obligations for the provision of statements of rights including a broader range of circumstances and strengthened obligations
- Clarifies the role of nominated support persons and relaxes witnessing requirements to support increased uptake
- Provides for advance statement of preferences to include broader preferences relating to treatment, care and support needs and relaxes witnessing requirements to support increased uptake
- Establishes obligation that all patients are provided written reasons when a treatment preference outlined in an advance statement is overridden or a second psychiatric opinion is not adopted
- Establishes the opt out model of non legal mental health advocacy

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
Statement of rights limited to persons on orders and specific treatments	Statement of rights also provided to persons admitted to bed based designated mental health services. New requirement to take all reasonable steps to ensure rights are understood.
No opt out non legal advocacy services	Provides the framework for the development of opt out non legal mental health advocacy services
Nominated person role focuses on supporting patient and representing their interests	The nominated person has been renamed 'nominated support person'. The role is focused on advocating for the views and preferences of the patient and supporting them to communicate and make their own decisions
Advance statements provisions focuses on treatment preferences	Advance statements have been renamed 'advance statements of preferences' and may include broader preferences relating to treatment, care, and support needs
Advance statements and nominated persons must be witnessed by authorised witnesses	Advance statements of preferences and nominated support persons to be witnessed by any adult to make it easier to create one
A patient receives verbal reasons when a second psychiatric opinion is not adopted	A patient is automatically provided written reasons when a second psychiatric opinion is not adopted

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Chapter 3

Treatment and interventions

- Introduces new rights based decision making principles for treatment and interventions to which decision makers in relation to compulsory assessment or treatment or restrictive interventions must give proper consideration
- Provides for the Chief Psychiatrist to prepare guidelines on the application of the decision making principles
- Remakes provisions relating to the presumption of capacity and informed consent
- Remakes provisions related to treatment, medical treatment, and neurosurgery
- Remakes and clarifies provisions related to Electroconvulsive treatment (ECT)
- Remakes provisions related to restrictive interventions and introduces new requirement to review the use of restrictive interventions and offer an opportunity for the person to participate in this review
- Regulates the use of chemical restraint for the first time in Victoria

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
No specific principles applying to the use of restrictive interventions	New decision-making principles include acknowledgement that restrictive interventions offer no inherent therapeutic benefit, requirement that authoriser of restrictive intervention consider the impact on the person and weigh potential harms against the harm being prevented
Written reasons for override of advance statement may be requested	Written reasons must be provided whenever a treatment preference outlined in an advance statement is overridden.
Some reporting obligations for restrictive interventions	Additional requirements to document alternatives to restrictive interventions tried or considered, requirement to review the use of restrictive interventions and offer a person subject to these interventions opportunity to participate in that review
Chemical restraint not recognised	Chemical restraint is defined and subject to regulation and reporting requirements

Chapter 4

Compulsory assessment and treatment

- Remakes existing provisions regarding the making of compulsory assessment and treatment orders
- Decision making principles to apply to decisions made about compulsory assessment and treatment
- Retains existing criteria for the making of these orders
- Reduces the maximum duration of community treatment orders from 12 months to 6 months

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
No specific principles applying to the use of compulsory assessment and treatment	New decision-making principles include acknowledgement that compulsory treatment is provided with the aim of promoting recovery but limits human rights and may in itself cause harm. Requirement that authoriser of compulsory treatment considers the impact on the person and weigh potential harms against the harm being prevented Maximum duration of community treatment order 6 months
Maximum duration of community treatment order 12 months	Maximum duration of community treatment order 6 months

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Chapter 5

Taking into care and control, transport, transfer and search by authorised persons

- Establishes framework for implementation of Royal Commission's recommendation for health led response to mental health crises in the community (Recommendation 10)
- Embeds principles that wherever possible responses to mental health crises will be led by health professionals rather than police or protective service officers and that powers should be exercised in the least restrictive way possible
- Provides for registered paramedics employed by ambulance services and prescribed health professionals to take a person into care and control to arrange for examination for an assessment order
- Increases flexibility to allow for examination to occur in a range of new locations as reforms continue
- Aligns powers of Protective Service Officers (PSOs) with those of police under this Act

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
No specific principles guiding crisis response	New principles to require that wherever practicable, responses to mental health crises will be health led, or informed by the advice of a health professional; and powers exercised in the least restrictive way possible.
Only Police and PSO empowered to respond to people in crisis in the community to allow a person to be assessed	Gives registered paramedics employed by ambulance services the ability to respond independently to a mental health crisis where it is safe to do so. Provides a framework for the broader health led response reforms to acquit Royal Commission recommendation 10 that responses be health led where possible and safe. <i>* Please note this may be subject to amendments in the Amendment Bill</i>
Limited options once a person experiencing a crisis is apprehended by police default is taken to EDs	Authorised persons will have more options to assist a person experiencing a mental health crisis, in line with new principles, including, transportation to a broader range of places for examination, or releasing a person from care and control when they are no longer at risk of serious and imminent harm.
PSOs do not have all the powers afforded police as authorised persons	PSO's on duty at, or in the vicinity of, a designated place, included as authorised persons. Requires compliance with dignity of search/ nominating gender of searcher provisions

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Chapter 6

Administration

- Establishes new entities and roles as recommended by the Royal Commission, including the Chief Officer for Mental Health and Wellbeing, regional mental health and wellbeing boards and regional state wide and multiagency panels
- Re-establishes existing roles of Secretary and Chief Psychiatrist
- Clarifies the scope of the Chief Psychiatrist's jurisdiction to include 'clinical mental health services' designated mental health services, mental health and wellbeing services in correctional settings and other services as prescribed

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
Not applicable	New roles established including: <ul style="list-style-type: none"> • Chief Officer for Mental Health and Wellbeing • Regional Mental Health and Wellbeing Boards • State-wide and Regional Multiagency Panels
Chief Psychiatrist does not exercise powers in correctional settings	Chief Psychiatrist jurisdiction expanded to include mental health and wellbeing services in correctional settings
Chief Psychiatrists jurisdiction covers designated mental health services and publicly funded mental health community support services	Chief Psychiatrist jurisdiction to cover 'clinical mental health services' – meaning – designated mental health services, and wellbeing services in correctional settings and other services as prescribed. It is anticipated that services currently within jurisdiction will be prescribed in the first instance with additional services brought into scope as appropriate as the service system develops

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Chapters 7 & 8

Mental Health Tribunal, Community visitors and the Community Visitors Mental Health Board

- Remakes provisions related to the Mental Health Tribunal
- Allows single member divisions for unopposed adjournment and leave to withdraw proceedings applications
- Remakes provisions relating to the Community visitors and Community Visitors Mental Health Board

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
Mental Health Tribunal must be constituted by three members in relation to all hearings	Allows for single member divisions for Tribunal for unopposed adjournment and leave to withdraw proceedings applications
Ambiguous whether community visitors can inspect incident reports	Clarifies that community visitors can inspect incident reports



Chapter 9

Mental Health and Wellbeing Commission (including complaints)

- Establishes the Mental Health and Wellbeing Commission as recommended by the Royal Commission.
- The Mental Health and Wellbeing Commission will:
 - have responsibility for system wide oversight of the quality and safety of mental health service delivery
 - monitor and report on system wide quality
 - handle complaints about mental health and wellbeing service delivery
 - conduct investigations including 'Own Motion' investigations
 - inquire into system wide quality and safety challenges or concerns
 - advise government on areas of concern and areas for improvement
 - monitor achievement of Royal Commission's key goals, such as reducing the use of compulsory treatment and coercive practices
- Establish updated complaints handling processes and, where appropriate, more closely aligns with those under the Health Complaints Act 2016
- Explicitly allow for complaints about a failure to comply with obligations in relation to principles

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
Mental Health Complaints Commissioner is responsible for complaints about mental health service providers	New entity, Mental Health and Wellbeing Complaints Commission, established (with multiple commissioners including those in designated lived experience roles) and complaints resolution powers transferred. Jurisdiction extends to all mental health and wellbeing service providers under the Act.
Complaints must be about mental health services provided to a person	Scope to allow complaints from families, carers and supporters in relation to their experiences in those roles.
No own motion powers	Introduces own motion powers of investigation, with respect to matters related to the Mental Health and Wellbeing Commission's oversight role
Not applicable	Strengthened role for Commission in identifying and reporting on breaches of Act or serious risk of harm and for holding government account



Chapters 10-13

Security Patients, Forensic Patients, Intensive Monitored Supervision and interstate application

- Remakes provisions related to security and forensic patients and interstate application of mental health provisions with minor amendments
- Establishes intensive monitored supervision as a new response for a very small group of people with highly complex needs detained at Thomas Embling Hospital.
- Intensive monitored supervision will be an alternative to long term seclusion for this group who pose an ongoing, unacceptable risk of seriously endangering the safety of another person
- Intensive monitored supervision orders to be made by the Mental Health Tribunal for a maximum of 28 days (renewable).

Mental Health Act 2014

The only service response available for people who pose an ongoing, unacceptable risk of serious endangering the safety of another person is long term seclusion

No statutory requirement to provide statement of rights to forensic and security patients (although occurred in practice).

Mental Health and Wellbeing Act 2022

New Intensive Monitored Supervision Order available to allow patients at Forensicare - Thomas Embling Hospital to be detained within supervision unit, with oversight by Mental Health Tribunal.

Requirement to provide statements of rights to forensic and security patients and to take all reasonable steps to ensure those rights are understood.

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Chapters 14-16

**Victorian
 Institute of
 Forensic Mental
 Health, Victorian
 Collaborative
 Centre and
 Youth Mental
 Health
 and Wellbeing
 Victoria**

- Remakes provisions establishing the Victorian Institute of Forensic Mental Health (Forensicare) with minor changes to Board composition and new power for the Secretary to issue Directions to Forensicare
- Remakes provisions establishing the Victorian Collaborative Centre
- Establishes Youth Mental Health and Wellbeing Victoria (YMHVV), which will:
 - provide system leadership and provide strategic advice, giving agency to the voices of young people with lived experience in response to a crisis in youth mental health; and
 - enable a flexible model of delivery and oversight for integrated mental health and wellbeing services for young people by declared operators in specific areas.

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
Victorian Institute of Forensic Mental Health Board required to have at least one person who identified as having lived experience of mental illness or psychological distress	The Board of Directors for the Institute will also include at least one person who identifies as caring for or supporting, or having cared for or supported, a person with mental illness or psychological distress.
Not applicable	New entity Youth Mental Health and Wellbeing Victorian established



Chapter 17

Disclosure of health information, supplementary provisions and codes of practice

- Remakes provisions related to the mental health and wellbeing surcharge
- Remakes a range of general provisions, including powers for the Chief Psychiatrist to issue Codes of Practice
- Requires a review of the Act to be undertaken after the first 5 years of operation
- Re-enacts the existing framework for information sharing and makes some discrete improvements designed to:
 - improve consumer experiences and autonomy
 - better involve families, carers and supporters
 - enable more integrated service delivery and support the establishment of new entities

Mental Health Act 2014	Mental Health and Wellbeing Act 2022
No specific principles for information sharing	New principles for information sharing are included to provide clarity of purpose and expectations around information sharing
Not applicable	Act reflects new service system by allowing information sharing with an emergency service provider in an emergency.
Not applicable	New provisions included to specify who can access information from the current electronic health information system and the scope of such access.
Not applicable	New process included to enable a consumer to contribute a statement on their health information held by a mental health and wellbeing service provider where the provider has previously refused to correct the information under the Freedom of Information Act 1982 or the relevant Health Privacy Principle.

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Mental Health and Wellbeing Act Amendment Bill 2023

The Mental Health and Wellbeing Amendment Bill 2023 has been introduced to the Victorian Parliament. The Bill will amend the Mental Health and Wellbeing Act 2022 to ensure the Act operates as intended and can be fully implemented when it commences on 1 September 2023. Since the passage of the Act in August 2022, service system reforms have progressed, and new service models rolled out. The amendments will make clear the scope of regulation, the powers and obligations of clinicians, and the rights of consumers under the Act with respect to these new services models.

The Bill includes amendments necessary to support the establishment of new entities such as the Mental Health and Wellbeing Commission and the Victorian Collaborative Centre for Mental Health and Wellbeing and corrects some technical and drafting errors in the Act. The Bill also extends the date for appointment of statutory Regional Mental Health and Wellbeing Boards by 1 year to 31 December 2024, to allow time for the interim regional bodies to lay the groundwork for transition, including participating in engagement activities with local communities and stakeholders.

Amendments in the Bill remove ambulance paramedics from the provisions conferring powers to take a person who is experiencing a mental health crisis in the community into care and control. The change will allow paramedics and other authorised health professionals to be prescribed by regulation at a later date when the service system is ready to support this change. The amendments to the Act will allow time to ensure there are appropriate system reforms in place to support paramedics and other health professionals, to take on these roles. Rights-protective improvements in the Act remain in place including greater protection of privacy and dignity during a search; the ability to release a person from care and control where they no longer pose serious and imminent risk; the requirement for use of powers to be health informed whenever reasonably practicable and for the least restrictive approach to be taken to emergency responses and transport.

The Bill has passed the Legislative Assembly of the Victorian Parliament and is due to return to the Legislative Council in August.

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For further training

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