

5 July 2021

Member briefing: A new Mental Health and Wellbeing Act

Background

The Victorian Government is drafting a new Mental Health and Wellbeing Act (the Act), as recommended by the Royal Commission into Victoria's Mental Health System.

An Expert Advisory Group has been tasked by the Department of Health to support the development and implementation of the Act, while a [consultation](#) process has been launched to understand the wider community perspective. As part of this, the VHA and Mental Health Victoria (MHV) are delivering a series of consultation workshops, funded by the Department of Health, to understand the service perspective. The information below is to support member understanding of what is being proposed.

The Department of Health (the department) is accepting submissions from individuals and organisations on their feedback to the key components of the Act. The deadline for the consultation is Sunday 1 August 2021. In conjunction with the workshops, the VHA is developing a submission on behalf of members.

Consultation

Objective and principles of the new Act

A key aim of the new Act will be to promote and protect the rights of people living with mental illness or psychological distress, with a new set of objectives and principles to help guide interpretation of the new Act. As part of this, the new Act proposes introducing rights-based principles for mental health services to abide by.

The three proposed broad objectives are:

- achieving the highest attainable standard of mental health and wellbeing for people of Victoria
- protecting and promoting the rights and dignity of people living with mental illness or psychological distress
- recognising and promoting the role of families, carers and supporters in the care, support and recovery of people living with mental illness or psychological distress.

The Act has a series of sub-objectives to achieve each of these goals, including aiming to eliminate the use of restrictive practices within 10 years, reducing inequities in access to, and the delivery of, mental health and wellbeing services, and recognising and respecting the lived experience of families, carers and supporters.

The proposed principles argue that, along with 10 other principles, mental health services and decision-makers under the new Act should:

- provide access to a diverse mix of treatment, care and support, taking into account the needs and preferences of people living with mental illness or psychological distress and with the least possible restriction of rights with the aim of promoting recovery and full participation in community life
- involve people receiving mental health and wellbeing services in all decisions about their assessment, treatment and recovery and ensure they are supported to make, or participate in, those decisions, and respect their views and preferences, including when those decisions involve a degree of risk
- ensure compulsory treatment and restrictive practices are only used as a last resort.

A full breakdown of the proposed objectives and principles is available in the consultation paper. To support these objectives and principles, it is proposed that the new Act include:

- powers for the Mental Health and Wellbeing Commission to issue statutory guidelines on how the principles should be interpreted and applied
- requirements for certain bodies (including new entities and service providers) to include information on performance against the objectives and principles in their annual reports
- a new ground of complaint to the Mental Health and Wellbeing Commission when it is believed a service provider or decision-maker has not made all reasonable efforts to comply with the principles.

Non-legal advocacy, supported decision making and information sharing

Non-legal advocacy

The proposal is that the new Act will create an opt-out non-legal advocacy system, ensuring all consumers receiving, or at risk of receiving, compulsory treatment can connect with non-legal advocacy services; or they can choose to not accept this support. The new Act will require mental health and wellbeing service providers to notify non-legal advocacy services as soon as practicable, within 24 hours, after the making of an assessment order or a temporary treatment order. Necessary information will also be shared to allow the non-legal advocate to contact the consumer.

The new Act will include protections to ensure advocates can connect with consumers, including:

- rights for advocates to access inpatient services
- obligations on service providers to give reasonable assistance to advocates in performing their functions, such as responding to any requests for information within a maximum of three days
- obligations on service providers to notify a person's advocate in certain circumstances.

To better recognise non-legal advocacy, the Chief Officer for Mental Health and Wellbeing will be supported under the new Act to issue operating guidelines for these services. These guidelines will clarify and give effect to the obligations of mental health service providers to engage with non-legal advocacy services.

Supported decision making

The new Act, it is proposed, will take many approaches to enable supported decision making, in line with the Royal Commission recommendation. These changes are expected to strengthen a human rights-based culture in mental health services, as well as increasing oversight and monitoring of supported decision making. The new Act will promote tools that enable supported decision making. These include mechanisms such as:

- statements of rights – the new Act will require a statement of rights, which will be developed with consumers and carers, to be given to consumers who are voluntarily admitted as inpatients. The person providing the statement must ensure the consumer understands their rights
- advance statements – while an authorised psychiatrist will be able to override an advance statement, additional measures will be put in place to increase the transparency of this decision, including a written justification for consumers, having broader preferences in the advance statements, and having a wider range of people being able to witness the making of an advance statement
- nominated persons – the new Act will require the nominated person to agree to support the person to make their own decisions and to help represent the views and preferences of the person
- second psychiatric opinions – the new Act will allow for more flexibility in how second opinions can be provided, with the consumer's consent, as well as require that an authorised psychiatrist documents their reasons for not accepting the opinion of the second psychiatrist
- oversight and monitoring – it is proposed that service providers will need to document all efforts and engagement connected to supported decision making, such as discussions about informed consent for treatment, efforts to support a consumer to make a decision, and decisions to act against a person's views and preferences. The department and Regional Mental Health and Wellbeing Boards will use this information to improve practices among service providers, while it will also support broader system oversight.

Information sharing

The new Act will be guided by new principles for information collection and use, and information sharing. The proposed principles, amongst others, include:

- accountability for high-quality information collection and use
- consumer consent and privacy
- supporting transitions between services or care levels, and integrated services
- transparency between service providers and consumers in relation to information sharing.

The new Act will enhance consumer access to their own information by enabling the Health Complaints Commissioner to issue guidelines to mental health and wellbeing providers on consumer access to information about a mental health and wellbeing service. Consumers will also be able to ask that a statement be included on their record if they disagree with the information in the record.

It is also proposed that the new Act will allow information sharing for the redesigned system. This includes sharing information with Ambulance Victoria as well as sharing across a larger range of services (such as housing or alcohol and other drug services) to support a more integrated experience. Furthermore, new provisions will allow some basic information to be shared across the broader social service system. While consent for sharing basic information with the broader social service system will not be required, consumers will have the right to request that this information not be shared. The services that may receive information under this provision will be part of a further system design process and will be the subject of further consultation.

To support information collection, use and sharing, the new Act will also give consideration to new information-sharing infrastructure – the Secretary of the department will have the power to establish new information-sharing systems and authorise people and entities to use them. The new Act will not set out the detailed design of these new systems. This will be developed separately, as will training, professional guidelines, standards and cultural change to support the new Act and appropriate changes in practice.

Treatment, care and support

Compulsory treatment

As well as principles relating specifically to the use of compulsory treatment, the new Act proposes to increase accountability surrounding its usage. The Mental Health and Wellbeing Commission will issue statutory guidelines on how to apply the principles when making compulsory assessment and treatment orders, as well as investigate and monitor the use of compulsory treatment. The Chief Officer for Mental Health and Wellbeing will set system-wide targets, including for reducing the use and duration of compulsory treatment, while formal reporting requirements will be established under the new Act to help drive widespread change in the use of compulsory treatment such as publishing system data.

It is also proposed that the criteria for compulsory treatment will change, with compulsory treatment to be focused on a person with a mental illness needing immediate support to prevent experiencing serious distress, or to prevent *serious and imminent* harm being caused to the person or another person. The new Act will require that other treatment and non-treatment supports, which could be reasonably provided to a person to reduce the risk of distress or harm, be considered during assessment prior to making an order. Statutory guidance would be issued to provide clarity and support this process.

The new Act is proposing to reform the process for establishing compulsory treatment. This includes allowing the Mental Health Tribunal to require that a conference be held ahead of the Tribunal considering a treatment order extension, if consumers request it, to facilitate a more holistic approach to care. The new Act and regulations will allow for greater flexibility about who may be authorised to make a temporary treatment order, such as nurse practitioners and social workers. Further consultation will be undertaken in developing regulations to consider the benefits and workforce and operational issues that might arise through alternative approaches.

In developing the new Act, consideration will also be given to how the new Act or regulations can include measures to provide confidence to decision-makers and workforce who make treatment and care decisions that are consistent with the principles, the broader vision for Victoria's mental health and wellbeing system, and allow for dignity of risk.

Seclusion and restraint

The new Act will regulate the use of seclusion and restraint so that these incidents are formally recorded and monitored to support reducing their usage. The new Act will require clinicians to balance consideration of the harm of the restriction with the harm sought to be prevented by it, as well as require clinicians to document the alternative treatments and supports that were tried or considered. The Mental Health and Wellbeing Commission will issue statutory guidelines and have oversight of the use of seclusion and restraint.

To support this process, many entities across the system will be responsible for progressing the objective to reduce and ultimately eliminate the use of seclusion and restraint. The Chief Officer for Mental Health and Wellbeing will be required to set system-wide targets, including for reducing the use of seclusion and restraint, while the Mental Health and Wellbeing Commission will receive complaints, monitor progress and compliance and have a power to audit or investigate the use of seclusion and restraint, reporting to parliament on the progress against the objectives.

The new Act includes a definition of chemical restraint that restricts its use to only as a last resort. It is proposed that the way chemical restraint is regulated considers both the clinical intent and the impact of chemical restraint on the consumer. This will be complemented by activities that aim to better understand prescribing practices and support clinicians and services to ensure medications are not being inappropriately used. As part of this, the Chief Officer for Mental Health and Wellbeing will work with public mental health services and other stakeholders to set targets, develop, monitor and report on appropriate measures, and work towards eliminating the use of chemical restraint.

Governance and oversight

The new Act proposes to establish four new roles or entities which were key components of the Royal Commission's vision for reform:

- Mental Health and Wellbeing Commission – the Commission, among many other responsibilities, will have responsibility for system-wide oversight of the quality and safety of mental health service delivery, as well as monitoring and reporting on system-wide quality. It will also inquire into system-wide quality and safety challenges or concerns, advise government on areas of concern/improvement and monitor achievement of some of the Royal Commission's key goals. As recommended by the Royal Commission, it is proposed that the current powers of the Mental Health Complaints Commissioner transfer to the new Mental Health and Wellbeing Commission.
- Chief Officer for Mental Health and Wellbeing – the proposed role will include responsibility for: developing mental health and wellbeing strategy, policy and guidelines; planning, developing and commissioning mental health and wellbeing services; monitoring the performance, quality and safety of mental health and wellbeing service providers; and developing and supporting the mental health and wellbeing workforce.
- Regional Mental Health and Wellbeing Boards – to be phased in over several years, Regional Mental Health and Wellbeing Boards will support mental health and wellbeing services to be planned and organised in a way that responds to community needs and improves outcomes as well as provide a platform for greater integration. The new Act will also support the establishment of eight time-limited interim regional bodies to provide advice to the department as it plans, develops, coordinates, funds and monitors a range of mental health and wellbeing services in each region.
- Statewide and Regional Multiagency Panels – to be established in each region, these panels will be one component of support available to the group of consumers who need and benefit from ongoing intensive treatment, care and support. They will bring together different and diverse service providers to support collaboration and accountability in providing integrated treatment, care and support to consumers, as well as provide strategic advice to Regional Mental Health and Wellbeing Boards and the department.

A visual outline of how these new roles and entities fit together is available in the consultation paper.

The Royal Commission also recommended the establishment of a Collaborative Centre for Mental Health and Wellbeing. The Victorian Government has indicated that this Centre will be established in separate legislation to expedite its operations.

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Next steps

The VHA and MHV are inviting members to attend a workshop consultation to discuss these proposals for the new Mental Health and Wellbeing Act, while the VHA is preparing a submission to the Department of Health for the new Act.



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