

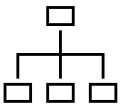
## Mental Health and Wellbeing Bill 2022

On 22 June 2022, the Victorian Government introduced the [Mental Health and Wellbeing Bill 2022](#) (the Bill) – which is set to replace the *Mental Health Act 2014* – to the Victorian Parliament.

### Executive summary



**Who:** mental health service providers (which can include public health services, public hospitals and community health), Ambulance Victoria, and Forensicare



**What:** the Bill will reform the Victorian mental health system, creating new bodies, structures and regulations – including the Mental Health and Wellbeing Commission, regional mental health and wellbeing boards, and rights-based principles for the system



**When:** the legislation is in Parliament, is expected to pass, and will come into effect a year after its passage



**Why:** delivering on the final recommendations from the Royal Commission into Victoria's Mental Health System final report

### Background

The need for a new Mental Health and Wellbeing Act (the Act) was Recommendation 42 in the final report from the Royal Commission into Victoria's Mental Health System (Royal Commission), which was released in March 2021. The Act was meant to be able to enable the wider reform envisioned by the Royal Commission.

The VHA developed a [submission](#) on behalf of its members during the initial public consultation on the proposed Act. The submission was based on consultation and discussions with VHA members and partners as part of a broader forum series in collaboration with Mental Health Victoria. We have continued to provide sector insight through more recent targeted consultation on the Bill, ensuring the voices of the sector – those delivering mental health services – were included in the resulting policy framework.

### VHA response

#### Important milestone

The VHA has [welcomed](#) the Bill and its proposed reform – and is pleased to be able to support the draft legislation. VHA CEO Tom Symondson attended the second reading of the Bill in parliament, following our engagement with the reform process.

### VHA advocacy outcomes

VHA advocacy efforts have led to:

- the inclusion of an objective focusing on the mental health and wellbeing workforce
- mental health service providers only having to report on their adherence to the new mental health and wellbeing principles through their annual report
- changes in language around the health-led response to a mental health crisis, Mental Health and Wellbeing Commissioners, and complaint handling standards.

### The Bill – key changes

#### New structures

The Bill increases the scope of regulation to include a broader range of mental health and wellbeing services, reflecting the greater services required to deliver community-based treatment, care, and support.

The Bill also establishes the architecture for the new mental health and wellbeing system, including new entities and offices for governance, and oversight of the redeveloped mental health and wellbeing system:

- **The Mental Health and Wellbeing Commission** – a new statutory entity, incorporating the complaints functions of the Mental Health Complaints Commission and broader oversight of quality and safety of the mental health system, as well as overseeing implementation of Royal Commission recommendations.
- **Regional Mental health and Wellbeing Boards** – a new statutory entity to increase regional governance and local input into decisions about service commissioning.
- **Chief Officer for Mental Health and Wellbeing** – a new role in the Department of Health to elevate and maintain the importance of mental health and wellbeing within the department.
- **Youth Mental Health and Wellbeing Victoria** – a new statutory entity to provide system leadership and support involvement of lived experience.

#### Objectives and principles

A key change is the creation of new rights-based objectives and principles, along with strengthened obligations on mental health and wellbeing service providers to comply with the principles. The objectives and principles apply to involved services, bodies, and stakeholders. New objectives include one on the mental health and wellbeing workforce, and their mental health. Mental health service providers will report on their adherence to the new mental health and wellbeing principles through their annual report.

#### Crisis response

The Bill also enables new health-led responses to people experiencing mental health crises in the community, with a requirement to arrange a medical assessment if someone is taken into the care and control due to concerns about their wellbeing; with some health professionals authorised to take a person into care and control. Those actioning these powers will need to give proper consideration to the new mental health and wellbeing principles; use the powers in the least restrictive way possible; and, where practicable, be led by a health professional. Alongside the broader development of Local and Area Mental Health and Wellbeing Services, health-led crisis response should lead to less mental health presentations at emergency departments.

### **Protection of rights**

The legislation, in line with the Royal Commission, emphasises the rights and agency of consumers and patients in their care. A key part of this is increasing safeguards and requirements around advance statements, nominated persons, and supported decision-making. The Bill also establishes an 'opt-out' model of access to non-legal mental health advocacy services.

### **Treatment, interventions and assessment**

The legislation increases requirement and protections around treatment, interventions and assessment. This includes extending the jurisdiction and oversight of the chief psychiatrist to mental health and wellbeing services delivered in prisons and other custodial settings. Furthermore, for the first time in Victoria, the use of chemical restraint in mental health services will be regulated. While the Bill recommits to eradicating restrictive interventions in a decade, the details surrounding this will be reviewed in an independent process after the legislation passes.

### **Information sharing**

The Bill creates information-sharing principles as well as providing clarification regarding how information related to mental health and wellbeing can be collected and used, with a focus on consent-based information sharing – although with exceptions for integrated service delivery and safety.

## **Impacts to VHA members**

### **Still a lot of work to be done**

The [Explanatory Memorandum](#) is clear that the other legislative tools (such as regulations, directions, and guidelines) will be key instruments in implementing the Bill's vision – and that there is a need to work with the sector on the reform. For instance, while the Bill appears to increase patient protections, support and involvement without seemingly overburdening services, it is often contingent on defining what 'reasonable efforts' by providers would mean and constitute.

### **Information sharing**

The Bill's inclusion of information sharing provisions is a vital step in delivering Royal Commission's vision – and enabling integrated care. The VHA continues to engage closely with the department regarding the development of mental health information sharing and is pleased to see the exemptions enabling information sharing. The VHA is keen to see the wider health sector be similarly enabled.

### **Increased and extended regulation**

A broader range of mental health and wellbeing services will now be regulated – and there will be more regulation. That said, there doesn't appear to be an increase in administrative burden, although this is dependent on definitions and guidance.

### Focus on wellbeing but clinical primacy remains

While the Bill is emphatic on the rights of patients and the importance of their wellbeing, it continues to support service providers to deliver the care required. For instance, compulsory treatment and restrictive interventions are still to be clinically led, while the Bill provides for limitations of personal liability for certain people making decisions or performing functions under the Bill, including under the new health-led response.

### Some things have stayed the same

While there is a lot of change, some parts have stayed the same, with elements of the *Mental Health Act 2014* continuing. This includes items related to interstate patients and care, regulation of restrictive interventions, and the role of the chief psychiatrist in oversight.

### Next steps

The Bill is expected to pass the Victorian Parliament. Once the Bill is passed, it will become the Mental Health and Wellbeing Act – and will come into effect a year after its passage. Due to the big changes envisioned by the legislation, and the short time frame until it comes into effect, successful implementation will be vital to ensuring the Act delivers on its promise. The VHA will continue to advocate on behalf of members and work with the Victorian Government to achieve this.

Further information about mental health and wellbeing reform is available on the [department's website](#), while information sheets on different elements of the Bill are available [on Engage Victoria](#).



#### For further information contact

Ben Rogers

Senior Advisor, Policy and Advocacy

[ben.rogers@vha.org.au](mailto:ben.rogers@vha.org.au)

03 9094 7777