

Mental Health and Wellbeing Act 2022

Implementation update

ANMF member forum



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Today's session

Today's discussion:

- Update - Act Implementation Leads and Act requirements
- Key changes in the Act that will impact services and new products roll out
- Key concerns about the Act
- Practical tools already available and coming soon

What you will recognise from the MHA 2014

- **Remakes and/or clarifies provisions** relating to:
 - presumption of capacity and informed consent
 - treatment, medical treatment, and neurosurgery
 - Electroconvulsive treatment (ECT)
 - restrictive interventions
- Remakes existing provisions regarding the making of **compulsory assessment and treatment orders**
- **Retains existing criteria** for the making of these orders
- Retains scheme of orders though reduces the maximum duration of **community treatment orders** from 12 months to 6 months

How is the Act different to the current Act?

The principles

- Mental health principles are **more comprehensive**
- **Explicit ground for complaint** to the Mental Health and Wellbeing Commission in relation to the principles.
- 'Proper consideration' is the **same test that applies** to the consideration of rights under the *Charter of Human Rights and Responsibilities Act 2006*.
- Charter requires public authorities to give proper consideration to and act consistently with human rights. All public mental health services and their staff are public authorities.
- In practice what this means will vary according to the context but must be more than a tick box exercise.

How is the Act different to the current Act?

Protection of rights

Statement of rights to be provided to persons admitted to bed-based DMHS services

- Must take **all reasonable steps** to ensure rights outlined in the statement are understood
- Established opt-out non-legal mental health advocacy services
- Renamed '**nominated support person**' with focus on advocating for the views and preferences of the patient. Witnessing requirements eased to increase uptake
- Renamed '**advance statements of preferences**' and may include broader preferences relating to treatment, care and support needs. Witnessing requirements eased to increase uptake
- A patient is automatically provided **written reasons** when a second psychiatric opinion is not adopted

How is the Act different to the current Act?

Treatment and interventions

- New **decision-making principles** acknowledgement that restrictive interventions offer no inherent therapeutic benefit and requirement that authoriser of restrictive intervention consider the impact on the person and weigh potential harms against the harm being prevented
- **Written reasons** must be provided whenever a treatment preference outlined in an advance statement is overridden.
- Assessment orders must **identify responsible designated mental health service** (this may be varied at any time before the patient is examined)
- Additional requirements
 - obligation to aim to **reduce use** of restrictive interventions with eventual aim of eliminating their use
 - **document alternatives** to restrictive interventions tried or considered
 - **review use** of restrictive interventions and offer a person subject to these opportunity to participate in review
- Chemical restraint is defined and subject to regulation and reporting requirements

How is the Act different to the current Act?

Safeguards

- **Mental Health and Wellbeing Commission** taking on the existing complaints-handling function of the Mental Health Complaints Commissioner
- Jurisdiction extends to **all mental health and wellbeing service providers** under the Act.
 - complaints from families, carers and supporters in relation to their experiences
 - more closely **align processes** and powers with those available to the Health Complaints Commissioner
 - allow for complaints about a failure to comply with obligations in relation to principles
- Chief Psychiatrist jurisdiction to cover '**clinical mental health services**' - designated mental health services and MH&W services in correctional settings in first instance
- Additional services can be brought into scope by regulations as appropriate as the service system develops
- The operation of the **Mental Health Tribunal** and the structure of the orders they make have not changed. (Noting maximum CTO to six months)

How is the Act different to the current Act?

Information sharing

- New principles for **information sharing** are included to provide clarity of purpose and expectations around information sharing
- Services **must share admission and discharge information** where this is consistent with consumers consent.
- Act reflects new service system by allowing **information sharing** with Ambulance Victoria in relation to transport or an emergency, and (unless consumer elects it not be shared) with AOD and housing service providers
- Consumer **contribute a statement on their health information** where the provider has previously refused to correct the information under the Freedom of Information Act 1982 or the relevant Health Privacy Principle.
- Information **must not be disclosed** if there is a risk that a person may be subject to family violence or other serious harm

Implementation:

- Coverage of Emergency Departments

- Regulation are proposed to be passed by 1 September to **delay regulation of restrictive intervention in emergency departments**
- **Once made, the regulation will maintain the 'status quo'** for Emergency Departments – only patients on an order will be covered under the Act
- Regulation is **time limited** and will expire 31 March 2024
- Increase time to **support** rollout of changes across

Sector implementation update

- **Additional Training package** delivered to AILs
- **Open Act information session** being run by division twice daily
- **eLearning modules** to be available to services since 21 August
- **Forms** Available (except one)
- **Act Handbook** published on DH website
- **Act enquires inbox** - workforce - non-urgent
- **Factsheets** delivered to services through AILs
- A **daily update** to Clinical and Ops directors and AILS
- **Chemical restraint** reporting obligations
- **Flow charts, lanyards**
- **FAQs** on the DH website since 1 August and being added to on topics like '*Taking someone not care and control*' '*Who is now mental health and wellbeing service provider*'
- **Video content on key topics** – e.g. '*What is proper consideration?*' –
- External **Promotion materials** – posters
- **Board pack** for Boards and CEOs
- **Practical guidance** for workforce
- **Partnering** with sector organisations

Implementation update

- Activities planned to 1 September 2023

- Further **e-learn modules**
- Targeted **information sessions for medical workforce**
- **Promotional materials**
- **Translated materials** including Statements of Rights
- **Tools to support local resolution** of queries
- **Animated videos and easy English fact sheets** for the community
- Additional topic specific **fact sheets and FAQs**

Sector implementation – Act Implementation Leads

Act implementation leads

- Planning and activities at local level
- Key contact for staff with queries about new Act
- Engaged since May 2023 and until July 2024
- Community of Practice – including sharing of resources and updated policy and procedure templates
- Pulse check and feedback to department
- Ongoing education and support for Act implementation
- Face to face information sessions with staff from 7th August

Questions?

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