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# Independent Review of Compulsory Treatment and Decision-Making Laws

## ANMF (Vic Branch) consultation feedback

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# Independent Review of Compulsory Treatment and Decision-Making Laws. ANMF (Vic Branch) consultation feedback

### Question 1: There are many different perspectives on compulsory treatment. One of these is that compulsory treatment should be abolished/eliminated entirely. Do you agree with this?

- Prompt: Should elimination of compulsory treatment ever be the goal (remembering that the Royal Commission recommended the elimination of seclusion and restraint within 10 years)?
- Prompt: If compulsory treatment was abolished, what implications would we need to address? How could we address them?

**ANMF (Vic Branch) response:** No. Compulsory treatment is never a goal, we want to strive for elimination of compulsory treatment, understanding that there will be circumstances where it is needed for the safety of consumers and/or others. If we aimed for abolishment of compulsory treatment, we would have to accept initially poorer outcomes for some consumers. Implementation should be gradual with additional staffing, specific education techniques, group therapy, trauma therapy, and peer supports.

### Question 2: Are there any exceptional circumstances where compulsory treatment might be appropriate? If so, what are they?

- Prompt: What benefits, risks or considerations might be associated with allowing compulsory treatment in these scenarios?
- Prompt: How might resourcing issues be relevant to your answer to this question?

**ANMF (Vic Branch) response:** If someone is acutely mentally unwell and poses a serious risk to self, others in community. In some instances, compulsory treatment is lifesaving, for example ECT for severe depression. Low prevalence disorders would be the focus for those needing compulsory treatment. To decrease numbers of compulsory treatment you could exclude high prevalence disorders where capacity is often not an issue, accessing help is less of an issue and presentations are usually in psychological distress.

### Question 3: What do you think the purpose of compulsory treatment should be?

**ANMF (Vic Branch) response:** To improve the consumer's mental health and significantly reduce risk of harm to self or others. For lifesaving measures. This can include functioning, isolation, comorbid physical health. It should not be for psychological distress, or trauma related dysregulation.

### Question 4: What do you think the purpose of compulsory assessment should be?

- Prompt: Are there changes that could be made to assessment orders to enable supported decision-making and reduce rates of compulsory treatment?

**ANMF (Vic Branch) response:** This should provide immediate reduction in serious risk to consumers and others, allow for a period of assessment of psychiatric symptoms and allow a review by a psychiatrist. On the legal form you could add a tick box to ensure next of kin has been notified. Post compulsory assessment and prior to review by psychiatrist there should be a period of debrief, forward planning psychoeducation with the consumer to explain why they are on the assessment order and how they would like to move forward with any treatment or support (if any). This might be a time to discuss with next of kin, carers, prior to making a final plan.

### Question 5: What should supported decision-making in mental health treatment look like?

**ANMF (Vic Branch) response:** External person who has been chosen by the consumer when they are well. Including: family, next of kin, carers, nominated person and peer support. The person should have some education around mental health and not have their own agenda and bias towards the mental health system. It should be collaborative and respectful from all parties' opinions.

### Question 6: Why do so few compulsory patients have a nominated support person in place?

**ANMF (Vic Branch) response:** It is not supported or prioritised by health services. More often health services will contact carers who have a very good insight into consumers and their illness. Consumers choose other nominated persons, the nominated person can sometimes be someone anti psychiatry or an ex-consumer and the consumer then is able to ensure the health service does not contact carers who have information about them and their illness or symptoms.

Health services have less to do with consumers post a crisis or admission, but when the consumer is well it is the best time to debrief and discuss nominated person, carers, who is best to contact. Adding this important part of post crisis debrief would really assist in times of crisis.

### Question 7: What information should a support person receive?

**ANMF (Vic Branch) response:** Should depend on what the consumer has stipulated when well. A support person having full access to a consumer's file is problematic. Often the client chooses support person when unwell and they may not be suitable. This occurs often in public mental health. At times this is dangerous and the carers who live at home with the consumer often get no information as the consumer has not nominated them. Carers who live with consumers should be a priority.

### Question 8: If people had the right to choose a substitute decision-maker for compulsory mental health treatment, what would need to be considered?

**ANMF (Vic Branch) response:** A structure similar to the current Medical Treatment Decision Maker legislation in Victoria. It has safeguards so that a patient cannot appoint someone in the role unless the decision maker has capacity. This structure should also consider the substitute decision maker's experience in mental health. They need to be objective. Consider the longevity and quality of the relationship, and any conflict in that relationship related to family violence, financial abuse, or coercive control.

### Question 9: If a compulsory patient has not chosen a substitute decision-maker, should it be possible to assign a substitute decision-maker other than the authorised psychiatrist?

- Prompt: Should that substitute decision-maker be independent of the mental health service?

**ANMF (Vic Branch) response:** Appointing a decision maker against the consumer's wishes or when they don't have capacity is a further intrusion on their rights. The new Mental Health and Wellbeing Act 2022 has option for second opinion service, this may be considered in cases with no chosen substitute decision maker.

### Question 10: What would be the best process to identify and assign a substitute decision-maker for a compulsory patient who has not identified a specific person?

**ANMF (Vic Branch) response:** Second opinion service used for consumers who do not have a chosen substitute decision maker (rather than the 2nd opinion service only used when a client requests a second opinion). Or family members, who care for the consumer currently and have known them a long time with an established, trusting and caring relationship. Service providers are very aware of the long-term, caring family members who support consumers.

### Question 11: What changes could strengthen advance statements? Are there alternatives that could work better than advance statements?

**ANMF (Vic Branch) response:** Develop a mechanism so that advanced statements are acknowledged by clinicians at point of an assessment. For example: an acknowledgment section on the relevant paperwork. More prompts along the consumer's journey to discuss advanced statements If anyone has ever been under the Mental Health Act, it is mandated that a debrief and discussion is held to explain and offer advanced statements. In addition, it would be beneficial to hold a formal meeting rather than simply a passing comment. Daily education session for consumers on the wards to discuss advanced statements and the importance of those decisions. Most records are electronic. Health services could upload the Advanced Statement on the first page of the consumer's folder, and have an alert system identifying if they do or don't have one. If they don't have one, this could prompt a meeting to be scheduled to discuss.

### Question 12: What are the implications of having a values statement as an additional option for consumers?

**ANMF (Vic Branch) response:** All discussions and involvement with consumers regarding their care is important and empowering. So, to align with the physical health model, calling them non-binding values statements would be suitable. In fact, it makes the discussion and paperwork more mainstream, so consumers may not feel as stigmatised. However, it is worth mentioning that the continually changing of forms and language in mental health can cause confusion. Also important to note that the Mental Health and Wellbeing Act 2022 will override values statements.

### Question 13: Do you think any changes should be made to the process of making a mental health advance statement?

- Prompt: What supports should be available for the person making it? Should there be a capacity test like there is in physical health? Who should sign off on the advance statement, if anyone?

**ANMF (Vic Branch) response:** See answer 11. The consumer must be well when making the advanced statement. Capacity and capacity testing is hard, as is seen under the current Mental Health Act 2014 the definition can be interpreted in a subjective manner.

### Question 14: Are there any circumstances where it might be appropriate to override an advance statement? If so, what are they?

**ANMF (Vic Branch) response:** When conditions for compulsory treatment are met and wishes in the advanced statement aren't considered appropriate by the treating team. There will be many circumstances whereby a consumer's wishes outlined do not align with the treatment needs and may be overridden (for example: ECT, long term depot).

Which is why more emphasis and importance needs to be placed in making the advanced statement when the consumer is well, explain their illness, symptoms, what has worked and hasn't worked so they can make an informed decision about treatment for the advanced statement. Often, we see advanced statements of unwell complex client which say 'don't treat me'.

### Question 15: Are there any criteria that are particularly problematic?

**ANMF (Vic Branch) response:** Serious deterioration and serious harm are not defined. It has not been discussed or defined properly in the past or leading up to the new Act. Which leaves it open to interpretation. And judgement and capacity are also subjective and finding a definition will be hard. The criteria and description of having a mental illness is clearer and also now distinguishes from acute psychological distress. As well as alcohol and other drug use. Again, you could focus on low prevalence disorders and compulsory treatment, rather than high prevalence/trauma, where capacity is intact and helps seeking initiatives are usually undertaken.

### Question 16: What changes could be made to the assessment and/or treatment criteria?

**ANMF (Vic Branch) response:** Early intervention and increased access to community supports to build therapeutic relationships with health professionals to achieve goals (may include: housing, jobs, socialising, reducing isolation or creative pursuits). Increasing supports at the start of the journey reduces crisis and reliance on compulsory treatment.

A timeframe in which 'serious deterioration and serious harm' might occur could be useful for treatment orders. Holding a discussion between the treating team, case managers and carers prior to discharge to really weigh up the need for the order. Unfortunately, often it is done last minute without much thought.

- Prompt: How would your preferred changes help to make sure that the use of compulsory assessment and treatment is reduced, and that it stops being the defining feature of the mental health system?

### Question 17: Should the compulsory assessment and treatment criteria include a decision-making capacity criterion? What are the considerations?

**ANMF (Vic Branch) response:** There are different considerations in mental health regarding capacity and capacity is not well defined. We see this in mental health tribunal all the time when services and families agree to compulsory treatment, but mental health tribunal had a different view. If serious deterioration and serious harm are better defined, then that may be an adequate safeguard for consumers. We have tried to define capacity and judgment for many years in mental health. It is difficult, subjective and specific to each situation.

- Prompt: Are there different considerations regarding decision-making capacity in a mental health context, as opposed to physical health?
- Prompt: If a decision-making capacity criterion is introduced, are there any exceptional circumstances where the law should still allow for a person with decision-making capacity to be put on a compulsory assessment or treatment order? What are they?

### Question 18: Who should be able to sign off on an:

- **assessment order?** No change. Should not be carers/nominated person/or substitute decision maker.
- **temporary treatment order?** Psychiatrist
- **treatment order?** No change. Maybe not wait 28 days, have a review earlier.

- Prompt: Could a nominated or assigned substitute decision-maker have a role? Should the person signing off on the order be independent of the service?
- Prompt: What practical considerations, such as timing, need to be considered to make sure the right people can make the decision?

**ANMF (Vic Branch) response:** Points made about different psychiatrist having input in care is appropriate. More safeguards if there are different experts involved, for example the psychiatrist making a temporary treatment order, can't be the treating psychiatrist. Or use the second opinion service automatically when MHA is in use. This could be a question for consumer to answer in an advanced statement.

### Question 19: How could the criteria for compulsory assessment, temporary treatment, and treatment orders be different to each other?

- Prompt: Could different criteria make for more targeted responses? What are the implications of having different criteria?

**ANMF (Vic Branch) response:** The criteria really are the same for each step, but the reviews are the safeguards. Between assessment order and temporary treatment order, mandate a discussion about the Mental health Act, treatment options and advanced statement reviews (where possible). Between temporary treatment orders and treatment orders, add a consideration to reviewing past

history and serious relapses should be taken into account. This is typical presentation for low prevalence disorders.  Each relapse makes recovery harder.

### Question 20: Are there exceptional circumstances in which community treatment orders are appropriate?

- Prompt: Are there exceptional circumstances where continuous and/or repeated community treatment orders might be appropriate? If so, what are the considerations?

**ANMF (Vic Branch) response:** The current Act does not allow for long term compulsory treatment in certain circumstances (for example: past history evidence), which leads to relapse and more serious illness and symptoms.  There are always a cohort of consumers who will need long term management on a community treatment order. They are often well known to health services and without treatment they could become a danger to themselves or others, and may relapse if left without treatment care and support. The deterioration in their mental state often leads to lengthy stays in hospital with worsening impairment and recovery.

### Question 21: What changes to existing or planned oversight mechanisms are required to better protect the rights of compulsory patients?

- Prompt: Are there alternative oversight mechanisms that would be more effective?

**ANMF (Vic Branch) response:** Earlier review by mental health tribunal.Use of 2nd opinion service more readily or in all cases of Mental Health Act use on wards.

Better discharge planning.  If we make a discharge smooth, with good supports and housing then use of treatment orders may lessen.

Overtime there will be a culture change in view of the Royal Commission recommendations and the new Mental Health and Wellbeing Act 2022.  This will reduce the use of compulsory treatment. Monitoring occupational violence and aggression and ensuring safety for all is imperative.  This could be strengthened. If more resources are provided and earlier intervention and rapport building with the consumer, family and carers, this would lead to decrease in the reactivity of the sector and use of compulsory treatment when crisis has occurred.  We all aim to go to work and provide the best care and we don't want to abuse people's human rights.  As nurses we strive for best care outcomes.

### Question 22: How soon after a person is placed on a compulsory assessment and/or temporary treatment order should there be some form of independent review?

**ANMF (Vic Branch) response:** Review of temporary treatment orders within 1-2 weeks would be ideal.  Assessment orders already are reviewed usually in 24hrs.  If this was to be considered you could make the earlier review with mental health tribunal, nominated person, clients, carers, opt out advocates, and nurses on the ward to have a large discussion about current treatment and discharge planning. It would be a large treatment discussion looking at all facets from various stakeholder and treating team opinions and would allow it to happen all at once rather than in silos.

### Question 23: For what purpose could a substitute decision-maker make treatment decisions for a compulsory patient?

- Prompt: Should the purpose change depending on whether a compulsory patient is on an assessment or treatment order?

**ANMF (Vic Branch) response:** The goal should always be the health and wellbeing of the consumer and will consider the least restrictive treatment options. Although compulsory treatment may still be necessary in some cases. Opinions and preferences should be noted but decision is with treating team.

The considerations outlined in the paper (for example, what would serve the purpose of the order, how has a person responded to treatment in the past) are very good and should actually be based in paperwork to be considered prior to discharge.

https://engage.vic.gov.au/download/document/31333

https://engage.vic.gov.au/independent-review-of-compulsory-treatment-and-decision-making-laws