



Mental Health and Wellbeing Act 2022: Frequently Asked Questions (FAQs)

Last updated 23 August 2023

Why is Victoria introducing a new Mental Health and Wellbeing Act?

The new Mental Health and Wellbeing Act 2022 is a direct recommendation of the Royal Commission into Victoria's Mental Health system. It has a strong human-rights focus that is guided by 13 mental health and wellbeing principles.

The new Act aims to drive the highest possible standard of mental health and wellbeing for Victorians. It does this by outlining new roles, entities and reporting standards, and ensuring that the reformed system is guided by people with a lived (and living) experience of mental illness.

Who will be impacted by the Act?

The Act will impact all clinicians, practitioners and service providers working in the mental health and wellbeing space across Victoria.

What will the new Act mean for us?

While many important things will not change, the introduction of the Act may mean a range of adjustments to the way services are delivered to ensure service delivery is in line with the 13 principles of the Act and changes to legislation.

Employees will be provided with training, information and support about the changes and their responsibilities to enact them. The Department of Health will shortly release e-modules that will be hosted on Latte. Employees will be advised when this happens. Internal Monash Health training is being delivered on a rotational basis – please contact Leah Walton, Act Implementation Lead at Leah.Walton@monashhealth.org or 0419 847 096 for details.

When does the new Act come into effect?

The new Act comes into effect on Friday 1 September 2023.



What immediate changes can we expect?

Changes will come into effect in mental health settings from Friday 1 September 2023. Immediate changes to note are:

Community treatment orders: Under the new Act, the length of compulsory Community Treatment Orders (CTOs) will be reduced from 52 to 26 weeks. This change is designed to give patients more responsive, adaptable mental health support. For clinicians, it may result in more frequent mental health tribunals and evaluations. For consumers on an existing order, under the old Act, their review date will remain as already documented and provided.

Chemical restraint reporting: Chemical restraint will be recognised as a form of restrictive intervention under the new Act. The requirement to report this activity will come into effect on 1 September 2023.

Advance Statement of Preferences: From 1 September 2023, Advance Statement of Preferences will be easier to complete with any adult able to act as a witness. Previously, the Statement of Preference could only be witnessed by an authorised witness, such as a nurse, doctor, or other mental health practitioner.

This change is about encouraging patients to be active participants in their care by reducing the barriers to completion. We encourage teams to talk with patients, families, and carers about the benefits of completing an Advance Statement of Preferences to guide their care should they become unwell in the future.

Under the new Act, the Advance Statement of Preferences will be central to advocating for patient-led care. Discussions about the Advance Statement of Preferences should be documented and may need to take place more than once during an episode of care. Statements take time and the focus should be on completing them in a measured and considered way, ideally, when the consumer is well. These Statements are saved under our Scanned Medical Records (SMR) and should be checked as part of the initial assessment.

Face-to-face training on changes relating to the Advance Statement of Preferences will be delivered shortly – if you have any questions, please contact Leah Walton, Act Implementation Lead at Leah.Walton@monashhealth.org or 0419 847 096.

What is Section 232?

Section 232 (Care and Control), replaces section 351 (Apprehension) for those brought to the Emergency Department (ED) by police or protective services officers.

A consumer can be accepted into ED by a registered nurse, medical practitioner or authorised mental health practitioner.



How can I prepare myself and my team?

You can prepare for the change by completing the available Latte training modules and looking at the Handbook and Guidelines provided by the Department of Health, which are available here:

- Latte training modules: [Introduction of the Mental Health and Wellbeing Act 2022](#)
[Introduction of the Mental Health and Wellbeing Act 2022](#)
- Mental Health and Wellbeing Act 2022: [Mental Health and Wellbeing Act 2022 | health.vic.gov.au](#)
- Mental Health and Wellbeing Act 2022 Handbook: <https://www.health.vic.gov.au/mental-health-and-wellbeing-act>
- Obligations under the Mental Health and Wellbeing Act 2022: <https://www.health.vic.gov.au/chief-psychiatrist/obligations-under-the-mental-health-and-wellbeing-act-2022>
- Chief Psychiatrist Guidelines: <https://www.health.vic.gov.au/chief-psychiatrist/chief-psychiatrist-guidelines>

Managers are also encouraged to nominate a Mental Health and Wellbeing Act Local Champion. Local Champions attend community of practice meetings and provide insights on local-level actions to support the new Act.

For more information contact Leah Walton, Act Implementation Lead on 0419 847 096 or email Leah.Walton@monashhealth.org.

Will the changes create more work for our teams?

Some areas of our mental health program may experience increased demand. Greater access to advocacy services for consumers and their families or carers may also increase demand for relevant clinical teams and associated peer workers.

Similarly, the shorter duration of Community Treatment Orders may also lead to more frequent tribunals for relevant employees.

We are evaluating workload impacts, including the need for more resources in response to these changes.

Does the new Act extend additional rights to consumers, family members and carers?

The new Act has a strong focus on human rights, demonstrated through its 13 mental health and wellbeing principles. It recognises that consumers have the capacity to make decisions about their own care. As such, it is expected that the new Act will foster greater collaboration between clinicians, treating teams, consumers, family members and carers.

Complaints to the newly established Mental Health and Wellbeing Commission will be accepted from carers and family members regarding a wide range of issues, not merely consumer and treatment related matters.



What education will be available to consumers, family members and carers?

Consumer, family and carer brochures are currently being developed by the Department of Health to reflect the changes in the new Act. These will be available in 20 different languages and will be released in the coming weeks.

The [Mental Health and Wellbeing Act 2022 Handbook](#) is already available for reference.

The Independent Mental Health Advocacy (IMHA) service is currently developing an updated statement of consumer, family and carer rights. This will be disseminated as soon as completed.

Drop-in sessions, commencing in August, will be available for consumers and carers across Monash Health, to inform them of key changes associated with the new Act.

Consumer advocates will have a greater role as part of the Act. What is their scope?

It is anticipated that Independent Mental Health Advocacy (IMHA) staff will have a regular presence within services, as non-legal representation will be available on an 'op-out' basis, rather than 'opt-in'.

IMHA will be notified automatically via the Client Management Interface (CMI) within 24 hours, when:

- there is use of restrictive interventions, including chemical restraint
- consumers are transferred to another mental health service
- there is a variation to a Treatment Order, including community to inpatient and vice versa
- Treatment Orders are revoked.

Additionally, organisations must report to IMHA when a consumer's right to communicate have been restricted. The definition of 'communication' includes letters, telephone, electronic communication and receiving visitors.

Advocate provisions are extended to all consumers, including those under the care of Monash Children's Hospital.

Advocates will only be able to access personal and health information under the instruction of a consumer. Monash Health will collaborate with advocates to determine how this will work in each circumstance.

Will existing Advance Statements (developed under the 2014 Act) remain valid under the new Act?

Yes, Statements prepared before 1 September will remain valid post 1 September.



How will services know if a person has an Advanced Statement of Preferences?

The Act says that a DMHS must take all reasonable steps to find out if the person has an Advance Statement of Preferences and whether it is in effect. In practice, reasonable steps may include:

- checking their file to see if anything is on record
- asking the patient, their nominated support person or their family, carer or other supporter.

If a Statement is located, reasonable steps include asking the person if that is their most recent statement.

If the person is not able to be asked at the time, it would be reasonable to ask them again when they are able to answer.

Does the new Act legislate a ‘no wrong door’ policy?

There is no explicit statement within the Act regarding a ‘no wrong door policy’. However, as further reforms develop, it is likely that this will be one of the policies to be adopted.

Will there be any change to the process for referring or accessing the independent Second Psychiatric Opinion Service (SPOS)?

No, the process will remain the same.

The state-wide SPOS service remains as provided by Melbourne Health and Monash Health to consumers across Victoria, directly responding to requests for second opinions from consumers, carers and advocates. A second opinion relates to whether criteria for a relevant order apply and reviews treatment under that relevant order. Second opinions can also be provided internally now within services.