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| Mental Health and Wellbeing Act 2022 |
| Information for general practitioners |
| OFFICIAL |

# Key changes relevant to general practitioners

The *Mental Health and Wellbeing Act 2022* (the Act) introduces key changes:

* **New decision making principles for treatment and interventions:** The Act introduces new rights-based [decision making principles](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/treatments-and-interventions) for treatment and interventions to which decision makers, including general practitioners, must give proper consideration when making decisions in relation to compulsory assessment or treatment; or restrictive interventions.
* **New requirement to take reasonable steps when communicating under the Act**: Any person or entity communicating under the Act (including, for example a general practitioner who is making an assessment order for a person) must take reasonable steps to:
	+ determine what appropriate supports would assist the person
	+ provide appropriate supports; and
	+ explain the content of the communications and answer any questions as clearly and as completely as possible.

Examples of reasonable steps may include asking the person what appropriate supports they may need; arranging for the assistance of an interpreter, carer, family member, supporter or advocate; or adapting the environment or communication style to assist the person in understanding the information being provided.

If a person is incapable of understanding information or any oral explanation at the time when it would otherwise be provided, the examining practitioner must ensure that reasonable further attempts are made to provide the information or explanation at a time when the person is able to understand the information or explanation.

* **A new ‘statement of rights’:** A statement of rights sets out a person’s rights, and the processes that apply while a person is receiving a mental health and wellbeing service under the Act.

A statement of rights must be provided to a person and specified support people at key points during their assessment and treatment. This includes when an assessment order is made**.**

When a person is given a statement of rights, all reasonable steps must be taken to ensure that the person understands the rights set out in the document. The statement of rights must be in the proper form, provided here: [Statement of rights | health.vic.gov.au](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/statement-of-rights#statements-of-rights)

Any copies of the *Mental Health Act 2014* statement of rights should be disposed of from 1 September to ensure that people in receipt of the statement of rights are receiving the right information.

* **Examinations should be conducted in person where practicable:** The examination for an assessment order must be in person unless this is not practicable; in which case the examination may be done remotely.
* **A new Assessment Order MHWA101 form:** The Department of Health has developed new forms to support the new Act.

The new form will require that general practitioners name the designated mental health service which is to be responsible for assessing the person. This can be varied prior to assessment where needed.

To have legal effect, the order must include all required information.

The new form is available for download and use from 1 September 2023 at[Mental Health and Wellbeing Act 2022 forms | health.vic.gov.au](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/forms).Registered medical practitioners should dispose of *Mental Health Act 2014* forms from 1 September 2023 and use the new form to make sure the correct form that includes all the required information is used.

* **‘Chemical restraint’ is recognised as a restrictive intervention:** Chemical restraint means the giving of a drug to a person for the primary purpose of controlling the person's behaviour by restricting their freedom of movement. Chemical restraint does not include the giving of a drug to a person for the purpose of treatment or medical treatment. Chemical restraint is regulated under the Act, including where medication is given to a person for the purpose of transporting them to or from a designated mental health service. See [Restrictive interventions | health.vic.gov.au](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/treatments-and-interventions/restrictive-interventions) for more information.

# Victoria’s new *Mental Health and Wellbeing Act 2022*

The new Act commences on 1 September 2023 and replaces the *Mental Health Act 2014*. The new Act builds on existing provisions under the *Mental Health and 2014* and responds to recommendation 42 of the Royal Commission into Victoria’s Mental Health Services 2019.

The Act resets the legislative foundation for a new and reformed mental health and wellbeing system. It also establishes [new entities](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/context-of-the-act/differences-from-the-2014-act#new-roles-and-entities) within the new system’s architecture and includes broader regulation to support a safer and more inclusive system.

*Mental health and wellbeing service providers*

Unlike the *Mental Health Act 2014*, the new Act will cover a wider range of services called mental health and wellbeing service providers. Most general practitioners will not be a mental health and wellbeing service provider under the Act; however, if your practice receives funding from the Victorian Government or a Government entity for the primary purpose of providing a mental health and wellbeing service then it will likely fall within the definition of mental health and wellbeing service provider.

Mental health and wellbeing service providers have certain obligations under the Act. See the provider fact sheet available from [Mental Health and Wellbeing Act | health.vic.gov.au](https://www.health.vic.gov.au/mental-health-and-wellbeing-act) for more information.

# The role of general practitioners

As primary providers of mental health care, general practitioners will continue to have an important role in the mental health and wellbeing system. General Practitioners play a crucial role in providing primary mental health care and connecting consumers with appropriate mental health and wellbeing services.

Where a person may require specialist or compulsory treatment, General Practitioners may contact their nearest [specialist mental health service](https://www.health.vic.gov.au/mental-health-services/area-based-services) for advice or to make a referral.

As an option of last resort, the Act continues to provide registered medical practitioners the ability to make an assessment order to safely respond to a person who is at high risk and refusing treatment.

### Assessment orders

An assessment order is the first step in initiating compulsory mental health treatment and authorises the compulsory transport (where necessary) and subsequent assessment of a person by an authorised psychiatrist to determine whether the person needs compulsory mental health treatment. For more information on assessment orders and when they may be issued see [Assessment orders | health.vic.gov.au](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/treatments-and-interventions/assessment-orders).

#### Conducting an examination

Wherever practicable, an examination must be conducted in person. Where an in-person examination is not practicable, it may be conducted remotely.

Before examining the person, aregistered medical practitioner must:

* identify themselves
* inform the person that they will be examined and
* take reasonable steps to explain the purpose of the examination.

New communication requirements under the Act require that registered medical practitioners take reasonable steps to:

* determine what appropriate supports would assist the person
* provide those appropriate supports; and
* explain the content of the communications and answer any questions as clearly and as completely as possible.

For example, reasonable steps may include tailoring communication to a person’s needs, asking the person if they would like to use an interpreter; communicating in an accessible format or in an appropriate sensory environment; or allowing a person’s family member, carer, supporter or advocate to be present.

If a person is incapable of understanding information or any oral explanation at the time when it would otherwise be provided, the examining practitioner must ensure that reasonable further attempts are made to provide the information or explanation at a time when the person is able to understand the information or explanation.

The decision to make an assessment order is a decision that impacts on the rights and dignity of the person. Registered medical practitioners must give proper consideration to the new [decision making principles for treatment and intervention](https://www.health.vic.gov.au/chief-psychiatrist/decision-making-principles-for-treatment-and-interventions-mental-health-and-wellbeing-act-2022) prior to issuing an assessment order.

#### Determining if an assessment order should be made

A registered medical practitioner can make an assessment order where they have examined the person in the last 24 hours and are satisfied that:

* the person appears to have mental illness; and
* because the person appears to have mental illness, the person appears to need immediate treatment to prevent:
	+ serious deterioration in the person’s mental or physical health
	+ serious harm to the person or to another person
* if the person is made subject to an assessment order, the person can be assessed
* there are no less restrictive means reasonably available to enable the person to be assessed.

In determining whether the compulsory assessment criteria apply to a person, the registered medical practitioner:

* must consider information communicated by the person being examined; and
* may consider any other relevant information including information communicated by any other person.

#### Making an assessment order

If it is determined that compulsory assessment is required, the registered medical practitioner should complete the new [Assessment Order MHWA101](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/forms) form. To have legal effect, the order must include all required information.

The new form will require the name of the designated mental health service which is to be responsible for assessing the person. This can be varied prior to assessment where needed.

The practitioner making the assessment order must determine whether the order is to be:

* **a community assessment order** – which means the person must be assessed in the community; or
* **an inpatient assessment order** – which means the person needs to be taken to a designated mental health service to be assessed.

A registered medical practitioner may only make an inpatient assessment order if the practitioner is satisfied that the assessment of the person cannot occur in the community.

An assessment order comes into force when the order is made and expires:

* in the case of a community assessment order, 24 hours after it is made; and
* in the case of an inpatient assessment order, on the earlier of:
	+ 24 hours after the person is received at a designated mental health service; or
	+ 72 hours after the order is made.

In some cases, an assessment order may be extended. Forms needed for the making and extension of assessment orders will be available on the [Department of Health Website](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/forms#assessment-order-forms) form 1 September 2023.

#### After making an assessment order

As soon as practicable after the order is made, the registered medical practitioner must ensure all reasonable steps are taken to:

* inform the person that they are subject to an assessment order
* explain the purpose and effect of the order to the person
* give the person a copy of the order and a copy of the [statement of rights](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/statement-of-rights#statements-of-rights).

As above, the practitioner making the order must take all reasonable steps to provide appropriate supports, explain the content of the communication and answer any questions as clearly and as completely as possible.

If a person is incapable of understanding information or any oral explanation at the time when it would otherwise be provided, the examining practitioner must ensure that reasonable further attempts are made to provide the information or explanation at a time when the person is able to understand the information or explanation.

##### Arranging transport

If a registered medical practitioner makes an inpatient assessment order the practitioner must, as soon as practicable, arrange for the person to be transported to the responsible designated mental health service.

In some cases, it may be necessary to request assistance from emergency services such as an ambulance or another ‘authorised person’ to transport a person to a designated mental health service.

The Act lists a number of ‘authorised persons’ with the necessary powers to take a person into their care and control to provide transport.

The following authorised persons may provide transport under the Act:

* police (and in some circumstances, protective services officers)
* registered paramedics employed by an ambulance service as defined in section 3(1) of the Ambulance Services Act 1986 (that is Ambulance Victoria)
* registered medical practitioners employed or engaged by a designated mental health service
* authorised mental health practitioners (who are certain classes of person employed or engaged by a designated mental health service); or
* a member of a prescribed class of person (none are currently prescribed).

So far as is reasonably practicable in the circumstances, transport is to be provided in the least restrictive way possible to minimise any interference with a person’s human rights, including their liberty, privacy and dignity.

An ambulance must be used where the person requires:

* [chemical restraint](#_Chemical_restraint_for) or bodily restraint for safe transport; or
* urgent medical attention.

Involvement of police should only occur where it is not reasonably practicable or safe for transport to be provided by an authorised person who is also a health professional (such as a paramedic or authorised mental health practitioner). Where police are requested to assist in providing transport, any exercise of their powers under the Act must be informed by the advice of an authorised health professional (including paramedics), registered nurse or registered medical practitioner wherever practicable in the circumstances.

For more information on the roles and responsibilities of authorised persons see [Treatments and interventions.](https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/treatments-and-interventions#decision-making-principles-for-treatment-and-interventions)

##### Chemical restraint for the purpose of transport

Chemical restraint means the giving of a drug to a person for the primary purpose of controlling the person's behaviour by restricting their freedom of movement. Chemical restraint does not include the giving of a drug to a person for the purpose of treatment or medical treatment.

The Act allows registered medical practitioners to use chemical restraint on a person for the purpose of transporting the person to or from a designated mental health service, only where it is necessary to prevent imminent and serious harm to that person or another person.

A registered medical practitioner may also direct a registered nurse or a registered paramedic to use chemical restraint for the purpose of transporting the person to or from a designated mental health service.

Before using or directing the use of chemical restraint a registered medical practitioner must give proper consideration to the decision making principles for treatment and interventions.

Paramedics are also authorised to administer sedation within their ordinary scope of practice and in accordance with clinical practice guidelines.

### Responding to a mental health crisis in the community

Where a person poses a serious and imminent risk to themselves or others, general practitioners should call Triple Zero (000).

The Act gives police and protective service officers specific powers to take a person into their care and control to; prevent serious and imminent harm and arrange for the person to be examined for an assessment order.

Police and protective service officers may take a person into their care and control where they are satisfied that:

* the person appears to have a mental illness; and
* because of the person’s apparent mental illness, it is necessary to take the person into care and control to prevent imminent and serious harm to the person or to another person.

Police are not required to exercise clinical judgement; however, use of these powers must be informed by authorised health professionals wherever practicable.

Taking a person into ‘care and control’ is equivalent to the previous ‘s351’ apprehension power under the *Mental Health Act 2014*.

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