

# Factsheet – Electroconvulsive Treatment (ECT) and Neurosurgery

Office of the Chief Psychiatrist

**OFFICIAL**

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## Summary

The *Mental Health and Wellbeing Act 2022* (the Act) comes into effect on 1 September 2023.

The Act provides a framework to ensure all people with a mental illness or psychological distress receive care and treatment that meets their needs, with the least possible restrictions to their rights and dignity.

Provisions related to Electroconvulsive Treatment (ECT) are comparable to those of the *Mental Health Act 2014*, although with some drafting changes to clarify the provisions.

The Act includes clear descriptions of who can have ECT and under which circumstances and provides clarity on when a course of ECT approved by the Mental Health Tribunal ends.

## About Electroconvulsive Treatment and Neurosurgery

Under the new Act, the definition of ECT is unchanged from the *Mental Health Act 2014*.

ECT is an invasive form of treatment, and that this treatment (like neurosurgery) should only be performed without consent in very limited situations.

Designated mental health services that administer ECT must comply with strict guidelines and procedures, and report to the Chief Psychiatrist on the use of ECT. This ensures ECT is used appropriately and only when necessary, and that the rights and wellbeing of people who receive ECT are protected.

An adult of 18 years or older who is receiving mental health care on a voluntary basis may give informed consent to ECT in writing. If they do not have capacity to give informed consent, the Mental Health Tribunal can authorise ECT in certain circumstances. This requires that there is no less restrictive way for the person

to be treated and that the person either has an instructional directive providing informed consent to the ECT or a medical treatment decision-maker who has provided consent.

The Act regulates the use of ECT for all young people under the age of 18 years, whether voluntary or compulsory, even when the young person has given informed consent.

The Act also regulates the use of neurosurgery for mental illness for all consumers. The Mental Health Tribunal approves all applications regarding neurosurgery for mental illness. Neurosurgery for mental illness can only be performed on a person who has given informed consent in writing. No guardian, parent or other substitute decision maker may consent to neurosurgery for mental illness on behalf of another person.

## **Mental Health and Wellbeing Act 2022 reference(s)**

The ECT provisions are in Part 3.5 of the Act.

The Act notes the requirement to notify the Chief Psychiatrist of the use of ECT in section 118, and the requirement to report to the Chief Psychiatrist of the performance of neurosurgery in section 123.

## **Royal Commission – related recommendation(s)**

Electroconvulsive Treatment is defined in the Royal Commission final report as, ‘The application of electric current to specific areas of a person’s head to produce a generalised seizure’. Also known as electroconvulsive therapy.’ P.660 vol 1.

‘The Mental Health Tribunal to hear and determine the making of Treatment Orders and other applications, including applications to perform electroconvulsive treatment when a person does not have decision-making capacity or is under the age of 18 years and applications to perform neurosurgery for mental illness.’ P.666 vol 1.

## **Changes between MHA 2014 and the new MHWB Act 2022**

The Chief Psychiatrist continues to monitor the use of ECT in all designated mental health services.

## **Responsibilities under the MHWA Act 2022**

All designated mental health services must report the use of ECT via CMI/ODS to the Chief Psychiatrist.

All designated mental health services must report any serious adverse events associated with ECT that result in death (or a near miss), serious injury, serious illness and/or require transfer to an emergency department or similar setting, to the Chief Psychiatrist as soon as practicable.

All designated mental health services must report instances of ECT administration on young person below 18 years of age to the Chief Psychiatrist for data monitoring purposes. The Mental Health Tribunal makes the decision to approve ECT for people under the age of 18.

In the event of neurosurgery for mental illness, the psychiatrist responsible for the application or the treating psychiatrist must submit written reports to the Chief Psychiatrist within 3 months and again within the 9 to 12-month timeframe following the surgery.

All designated mental health services must refer clinically complex matters involving ECT that are both legally and ethically complex to the Chief Psychiatrist for consideration of the ECT Complex Consultation Expert Panel. A referral must be made by either an authorised psychiatrist or an ECT Director.

## Practice guidelines and reporting directives

Information regarding best practice guidelines, reporting and notification obligations for designated mental health services are contained within the Chief Psychiatrist's guideline for Electroconvulsive Treatment and the Chief Psychiatrist's reporting directive for ECT and Neurosurgery.

These documents can be found on the [Health Department's website](#). The reporting directive outlines the reporting obligations of designated mental health services, the timing and mechanisms by which services must notify the Chief Psychiatrist of serious adverse events, the use of ECT on consumers under 18, and reporting of clinically complex matters involving ECT that are legally and ethically complex to the Chief Psychiatrist for consideration of the ECT Complex Consultation Expert Panel.

In the event of a serious adverse event, designated mental health services must complete the [Chief Psychiatrist's Serious Adverse Event Reporting Form](#) and email to the Office of the Chief Psychiatrist on [ocp@health.vic.gov.au](mailto:ocp@health.vic.gov.au)

## Further information

Further information on ECT and neurosurgery is available on the [Health Department's website](#).

The new Act is available for download on the [Victorian Legislation](#) website.

Further information on ECT can be found on the [Mental Health Tribunal's](#) website.

Queries relating to ECT and Neurosurgery can be emailed to the Office of the Chief Psychiatrist on [ocp@health.vic.gov.au](mailto:ocp@health.vic.gov.au)

## Disclaimer

This fact sheet summarises key differences between the *Mental Health Act 2014* and *Mental Health and Wellbeing Act 2022* that apply to the Chief Psychiatrist's statutory role. It provides information to assist the mental health and wellbeing sector transition from the old act to the new act in the Chief Psychiatrist's areas of oversight. The fact sheet is valid for six months from the date of publication.

To receive this document in another format, phone 1300 767 299, using the National Relay Service 13 36 77 if required, or email [ocp@health.vic.gov.au](mailto:ocp@health.vic.gov.au)

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