

# Mental Health and Wellbeing Act: update and engagement paper

June 2021

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Department  
of Health

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# **Mental Health and Wellbeing Act: update and engagement paper**

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In this document, 'Aboriginal' refers to both Aboriginal and Torres Strait Islander people.

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## Contribute to Victoria's new Mental Health and Wellbeing Act

This paper describes the development of the new Act and presents proposals to meet the Royal Commission's recommendations.

Anyone can make a submission. We welcome contributions from individuals with diverse insights and experiences and from organisations that will be part of the redesigned system.

Summaries of the paper are available in Easy English and 18 community languages. The summaries include the policy proposals and questions for feedback. All the papers are available on the [Engage Victoria website](https://engage.vic.gov.au/mhwa) <<https://engage.vic.gov.au/mhwa>>.

# 1 Introduction

In March 2021, the Royal Commission into Victoria's Mental Health System released its final report. The report contains 65 recommendations, set over a 10-year reform vision, in addition to nine recommendations from the Royal Commission's interim report. The Victorian Government has committed to implementing these recommendations in full.

Thousands of Victorians contributed to the Royal Commission's once-in-a-generation report. It is through the stories so generously shared that the Royal Commission was able to understand how to strengthen and transform Victoria's mental health system.

The Royal Commission recommended that the Victorian Government replaces the current *Mental Health Act 2014* with a new Mental Health and Wellbeing Act, giving clear direction about many aspects of the new Act. To meet the Royal Commission's recommendations, the new Act will be in place by mid-2022.

The Department of Health is developing the new Act as the lead agency responsible for mental health legislation in Victoria. As described by the Royal Commission, the new Act will establish critical foundations for a redesigned mental health and wellbeing system. This includes people with lived experience in system leadership, as well as the entities needed to enable strong system accountability and transparency.

## 1.1 Update and engagement paper

This paper describes the development of the new Act and proposals on policy issues that require more input to make sure they meet the Royal Commission's recommendations. Feedback on the paper is welcomed via Engage Victoria between 15 June and 4 July 2021.

There are four key sections in the paper:

- the objectives and principles of the new Act
- non-legal advocacy, supported decision making and information sharing
- compulsory treatment and assessment, seclusion and restraint
- governance and oversight in the new Act.

Each of these sections includes:

- the Royal Commission's recommendations on that topic
- the department's proposals to meet the Royal Commission's recommendations, highlighting what will be different
- points of feedback about possible ways to improve the proposals.

Following the summary and next steps, for reference, is a glossary of terms used in the paper.

## Scope of the engagement process

Many aspects of the new Act are already clear from the Royal Commission's recommendations and report. This paper is seeking feedback only on topics where more input is required to ensure the Royal Commission's recommendations are appropriately reflected in the new Act and can be effectively implemented in practice. Questions on these topics are set out in this paper.

The new Act is just one part of the work to deliver on the Royal Commission's recommendations. The department will engage directly with stakeholders to ensure the views of those with lived experience, carers, families and the expertise of the mental health workforce underpin all aspects of the reforms. The department will keep people informed about implementation of the Royal Commission's recommendations and other opportunities to contribute.

## 1.2 Why are we developing a new Act?

**The new Mental Health and Wellbeing Act is needed to provide clarity regarding the rights, roles and responsibilities of people and organisations who manage, and interact with, the mental health and wellbeing system, and to describe the legal relationships that exist within the system, including between consumers and service providers.<sup>1</sup>**

**Further, the Act can enable good practice and new service models, encourage a human rights-based culture to flourish, and support efforts to reduce restrictive practices and compulsory treatment.<sup>2</sup>**

The new Act will:

- put the views, preferences and values of people living with mental illness or psychological distress, families, carers and supporters at the forefront of policies, programs and services
- promote good mental health and wellbeing for all people in Victoria
- set a strong new base for the mental health and wellbeing system
- provide clarity about roles and responsibilities
- reflect contemporary human rights practice and thinking
- ensure that services respond to the needs of individuals, including Aboriginal and Torres Strait Islander peoples, those who have experienced trauma or violence, and those with intersecting or co-occurring needs.

### What did the Royal Commission recommend about the new Mental Health and Wellbeing Act?

#### **Recommendation 42**

The Royal Commission recommends that the Victorian Government:

1. repeal the *Mental Health Act 2014* (Vic) and enact a new Mental Health and Wellbeing Act, preferably by the end of 2021 and no later than mid-2022, to:
  - a. promote good mental health and wellbeing;
  - b. reset the legislative foundations underpinning the mental health and wellbeing system; and
  - c. support the delivery of services that are responsive to the needs and preferences of Victorians.

<sup>1</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 38.

<sup>2</sup> Ibid., p. 35.

2. ensure the Mental Health and Wellbeing Act:

- a. includes new objectives and mental health principles, with its primary objective to achieve the highest attainable standard of mental health and wellbeing for the people of Victoria by:
  - promoting conditions in which people can experience good mental health and wellbeing;
  - reducing inequities in access to, and the delivery of, mental health and wellbeing services; and
  - providing a diverse range of comprehensive, safe and high-quality mental health and wellbeing services.
- b. clarifies the roles, responsibilities and governance arrangements of the new mental health and wellbeing system;
- c. establishes the bodies and roles referred to in other recommendations, including the Mental Health and Wellbeing Commission, the Chief Officer for Mental Health and Wellbeing, and Regional Mental Health and Wellbeing Boards;
- d. strengthens accountability mechanisms and monitoring arrangements for service delivery;
- e. specifies measures to reduce rates and negative impacts of compulsory assessment and treatment, seclusion and restraint;
- f. simplifies and clarifies the statutory provisions relating to compulsory assessment and treatment such that they are no longer the defining feature of Victoria's mental health laws; and
- g. specifies the ways in which information about mental health and wellbeing may be collected and used.

## 2 Objectives and principles of the new Act

This section outlines the proposed objectives and principles for the new Act. The Royal Commission was clear that objectives and principles are important in legislation:

**Principles are generally included in legislation to describe the values of the Act and, together with the objectives, provide guidance to individuals, organisations and the public on how to interpret and apply the Act.<sup>3</sup>**

The new Act's primary objective is laid out in the Royal Commission's recommendations. The new Act's other objectives and principles have been refined to reflect the Royal Commission's aspirations for the redesigned system, drawing on the current Mental Health Act.

### What will the new objectives and principles mean for people?

#### People living with mental illness or psychological distress will:

- have their rights and dignity promoted and protected
- have access to a diverse mix of treatment, care and support
- have their views, preferences and values placed at the forefront of the mental health and wellbeing system through new objectives and rights-based principles
- be able to make a complaint to the Mental Health and Wellbeing Commission if the principles of the new Act have not been complied with.

#### Families, carers and supporters will:

- have their role recognised and promoted throughout the mental health system through new objectives and rights-based principles
- be able to make a complaint to the Mental Health and Wellbeing Commission if the principles of the new Act have not been complied with
- benefit from more accessible local and integrated services being available to support the person they care for or support.

#### People working in the mental health and wellbeing service system will:

- be supported, through statutory guidance and the work of new entities, to act in ways and make decisions that are consistent with the principles of the new Act
- have access to statutory guidance about how the principles of the new Act must be given effect in compulsory treatment decisions
- be able to work and collaborate with a more diverse range of comprehensive and coordinated services to help people living with mental illness or psychological distress, including comprehensive local services.

#### Providers of mental health and wellbeing services will:

- be able to offer a diverse mix of better coordinated and integrated mental health and wellbeing treatment and care, within their local community where appropriate, taking into account peoples' needs and preferences.

<sup>3</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 40.

- be required to respond to complaints to the Mental Health and Wellbeing Commission when it is believed a service provider or decision-maker has not made all reasonable efforts to comply with the principles.
- include, in their annual reports, how the principles are being embedded and what actions are being taken to meet the objectives of the new Act.

## 2.1 What is changing in the new Act about objectives and principles?

The proposed objectives and principles below are based on the extensive consultation and detailed recommendations of the Royal Commission. They are also informed by the department's Mental Health and Wellbeing Act Expert Advisory Group and lived experience and clinical leaders.

### Proposed objectives

The proposed objectives of the new Act are to:

#### 1. Achieve the highest attainable standard of mental health and wellbeing for people of Victoria by:

- promoting conditions in which people can experience good mental health and wellbeing
- reducing inequities in access to, and the delivery of, mental health and wellbeing services
- providing a diverse range of comprehensive, compassionate, safe and high-quality mental health and wellbeing services that:
  - respond to the needs and preferences of people and are delivered in a timely and accessible way
  - connect and coordinate with other support services to respond to the broad range of circumstances that influence mental health and wellbeing
  - recognise and respond to the diverse backgrounds and needs and of the people who use them, including those related to age, disability, culture, neurodiversity, language, communication, religion, race, gender, gender identity, sexual orientation or other matters
- ensuring mental health and wellbeing services, including Aboriginal social and emotional wellbeing services, are culturally safe and responsive to Aboriginal and Torres Strait Islander peoples' identity, connection to culture, family, community and Country
- respecting Aboriginal and Torres Strait Islander peoples' right to practise self-determination and their decision-making power, including their right to free, prior and informed consent and individual choice
- promoting recovery of people living with mental illness or psychological distress
- promoting ongoing continuous improvements in the quality and safety of mental health and wellbeing services, including by ensuring the lived experience of people living with mental illness or psychological distress, carers, families and supporters is at the centre of practice change and system design.

#### 2. Protect and promote the rights and dignity of people living with mental illness or psychological distress, including by:

- ensuring that mental health and wellbeing services, decision-makers and the community are aware of and respect the rights (including those protected by the *Charter of Human Rights and Responsibilities Act 2006*) of people receiving mental health and wellbeing treatment and care and empower them to exercise those rights
- providing people living with mental illness or psychological distress with assessment and treatment in the least restrictive way possible with the least possible restrictions on human rights and human dignity

- recognising, respecting and accepting the right of people living with mental illness or psychological distress to speak and be heard in their own voices, from their own direct experience, and from within their own communities and cultures
- recognising the value of, and promoting, the knowledge and skill gained through lived experience to assist other people living with mental illness or psychological distress and lead and support improvements in the quality and safety of services
- providing oversight and safeguards in relation to treatment and care
- reducing the use of compulsory treatment and coercive and restrictive practices in mental health services
- aiming to eliminate the use of restrictive practices within 10 years.

### **3. Recognise and promote the role of families, carers and supporters in the care, support and recovery of people living with mental illness or psychological distress, including:**

- recognising and respecting the lived experience of families, carers and supporters
- recognising the value of, and promoting, the knowledge and skill gained through lived experience to assist other families, carers and supporters and to lead and support improvements in the quality and safety of services.

## Proposed principles

The proposed principles for the new Act are rights-based. The principles prioritise the views, preferences and values of people living with mental illness or psychological distress, as well as families, carers and supporters. These principles will underpin the policies, programs and services of Victoria's mental health service system.

The proposed principles of the new Act are set out below.

Mental health services and decision-makers under the new Act should:

1. **respect and promote the rights, dignity and autonomy** of people living with mental illness or psychological distress and empower people to exercise those rights
2. provide access to **a diverse mix of treatment, care and support**, taking into account **the needs and preferences** of people living with mental illness or psychological distress and with the **least possible restriction of rights** with the **aim of promoting recovery and full participation in community life**
3. ensure compulsory treatment and restrictive practices are **only used as a last resort**
4. involve people receiving mental health and wellbeing services in all decisions about their assessment, treatment and recovery and ensure they are **supported to make, or participate in, those decisions**, and respect their views and preferences, including when those decisions involve a degree of risk
5. **recognise, respect and support the role of families, carers and supporters** (including children) in decisions about assessment, treatment and recovery of people receiving mental health and wellbeing services
6. **value the lived experience** of people living with mental illness or psychological distress, their carers, families and supporters **as leaders and active partners**
7. **recognise and respond to the medical and other health needs** (including any related to the use of alcohol and other drugs) of people living with mental illness or psychological distress and consider and respond to the ways in which these needs may affect their mental health and wellbeing and use of services
8. recognise that people receiving mental health and wellbeing services may have specific **diversity-related needs and experiences** (as to age, disability, neurodiversity, culture, language, communication, religion, race, gender, gender identity, sexual orientation or other matters) and ensure that services are

provided in a manner that is safe, sensitive and responsive to these needs and experiences and upholds people's rights

9. recognise that people receiving mental health and wellbeing services may have specific **gender-related safety needs and experiences** and ensure that services are provided in a manner that: is safe and responsive to histories of family violence and trauma; recognises how gender dynamics can affect service use, treatment and recovery; and recognises how gender intersects with other types of discrimination and disadvantage
10. recognise and respond to the **range of circumstances that influence mental health and wellbeing** including relationships, accommodation, education, financial circumstances and employment status
11. **provide culturally safe and responsive mental health and wellbeing treatment and care** to Aboriginal and Torres Strait Islander peoples that is appropriate to, and consistent with, their cultural and spiritual beliefs and practices and in having regard to the views of their families and, to the extent that it is practicable and appropriate to do so, the views of significant members of their communities, including Elders and traditional healers, and Aboriginal and/or Torres Strait Islander mental health workers
12. recognise and promote the **best interests of children and young people** receiving mental health and wellbeing services, including providing treatment and support in age and developmentally appropriate settings and ways
13. recognise and protect the needs, **wellbeing and safety of children, young people** and other dependants of people receiving mental health and wellbeing services.

## Proposal to support the new objectives and principles

It is also proposed that the new Act include:

- a function for the Mental Health and Wellbeing Commission (see below) to issue statutory guidelines on how the principles should be interpreted and applied in relation to specific actions and decisions under the new Act (these guidelines will support decision-makers and service providers in complying with the principles and assist in system oversight)
- a requirement that certain bodies (including new entities and service providers) must include in annual reports information about how the principles are being embedded and actions that are being taken to progress the objectives of the new Act
- a new ground of complaint to the Mental Health and Wellbeing Commission when it is believed a service provider or decision-maker has not made all reasonable efforts to comply with the principles.

## Recommendations by the Royal Commission about objectives and principles of the new Act

**The objectives and principles in the new Mental Health and Wellbeing Act will reflect the views, preferences and values of people living with mental illness or psychological distress, families, carers and supporters; set the minimum standards to be met in the access to, and delivery of, mental health and wellbeing services; and realise the Royal Commission's aspirations for a future mental health and wellbeing system that is accessible, equitable and offers a diverse range of high-quality mental health and wellbeing services.<sup>4</sup>**

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<sup>4</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 41.

The Royal Commission has also provided clear direction that to ‘have regard’ to the principles is not sufficient to embed them in practice. The Royal Commission states it is important that action should be taken to progress Act objectives and that services and decision-makers operating under the new Act ‘make all reasonable efforts’ to comply with the principles.<sup>5</sup>

### What did the Royal Commission recommend about the objectives and principles of the new Act?

#### Recommendation 42(2)(a)

The Royal Commission recommends that the Victorian Government:

2. ensure the Mental Health and Wellbeing Act
  - a. includes new objectives and mental health principles, with its primary objective to achieve the highest attainable standard of mental health and wellbeing for the people of Victoria by:
    - promoting conditions in which people can experience good mental health and wellbeing;
    - reducing inequities in access to, and the delivery of, mental health and wellbeing services; and
    - providing a diverse range of comprehensive, safe and high-quality mental health and wellbeing services.

#### Recommendation 56(1)

The Royal Commission recommends that the Victorian Government:

1. promote, protect and ensure the right of people living with mental illness or psychological distress to the enjoyment of the highest attainable standard of mental health and wellbeing without discrimination.

### Points for feedback about objectives and principles of the new Act



**Question 1:** Do you think the proposals meet the Royal Commission’s recommendations about the objectives and principles of the new Act? If not, why?

**Question 2:** How do you think the proposals about objectives and principles could be improved?

<sup>5</sup> State of Victoria, Royal Commission into Victoria’s Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 42.

### 3 Non-legal advocacy, supported decision making and information sharing

The Royal Commission made several recommendations about non-legal advocacy, supported decision making and information sharing to help improve experiences for people accessing Victoria's mental health system. Each of these topics is addressed below.

#### What will the changes about non-legal advocacy, supported decision making and information sharing mean for people?

##### People living with mental illness or psychological distress will:

- be provided with a statement of rights when made subject to any compulsory order or when admitted to an inpatient unit on a voluntary basis
- be able to have nominated person paperwork and advance statements witnessed by a broader range of people
- be able to include preferences about a broad range of matters in advance statements and be provided with written reasons for any decision to override treatment preferences as expressed in an advance statement
- be able to receive more timely second psychiatric opinions through changes to increase flexibility in how opinions can be provided
- be provided with written reasons for any decision not to accept a recommendation made by a second psychiatrist
- be offered advocacy support if a compulsory assessment or treatment order is made
- have a right to communicate with an advocate that cannot be restricted
- be able to ask that a statement be included on their record if they disagree with the information in the record.

##### Families, carers and supporters will:

- if acting as a nominated person, agree to support the person making the nomination to make their own decisions and to help represent the person's views and preferences
- benefit from advocacy services being available to give additional support to the person they care for or support
- be provided with information at defined points during a person's care if that person consents, as well as in the particular circumstances currently allowed under the existing Mental Health Act.

##### People working in the mental health and wellbeing service system will:

- have access to statutory guidance about how the principles of the new Act must be given effect and how to better provide for supported decision making
- if providing advocacy services, have a right to access services and receive reasonable assistance in performing their functions.

##### Providers of mental health and wellbeing services will:

- be able to share information to provide more collaborative and integrated service delivery
- be required to meet new obligations on consumers' access to non-legal advocacy and second opinions as required by the new Act and meet the new non-legal advocacy, supported decision-making and information-sharing obligations.

### 3.1 What is changing in the new Act about non-legal advocacy?

Non-legal advocates provide information and support to consumers and act on their instructions. Like a legal advocate, they do not impose their own beliefs about what would be in the consumer's 'best interest'; rather they represent the consumer's preferences as expressed by them.

The Royal Commission found that non-legal advocacy is highly valued by consumers, effective in putting supported decision making into practice, and may drive down the use of coercive practices. However, not all consumers are aware of the availability of advocacy support or able to access it.<sup>6</sup>

#### Proposals about non-legal advocacy

##### Creating an opt-out non-legal advocacy system

The new Act will ensure all consumers receiving, or at risk of receiving, compulsory treatment can connect with non-legal advocacy services.

The new Act will require mental health and wellbeing service providers to notify non-legal advocacy services as soon as practicable, within 24 hours, after the making of an assessment order or a temporary treatment order. Necessary information will also be shared to allow the non-legal advocate to contact the consumer.

Consumers will have the right to opt out of this service if they choose.

The new Act will include protections to ensure advocates can connect with consumers. This will include:

- rights for advocates to access inpatient services
- ensuring there can be no restrictions placed on a consumer's right to communicate with an advocate
- rights for advocates, with the person's consent, to access a person's records, meet with the person or attend any meeting or consultation with the person
- obligations on service providers to give reasonable assistance to advocates in performing their functions, including responding to any requests for information within a maximum of three days
- obligations on service providers to notify a person's advocate in certain circumstances, including when a person is subject to seclusion or restraint.

These proposals aim to meet the Royal Commission's recommendation to establish an 'opt-out' model for non-legal advocacy, rather than relying on consumers' ability to access these services.

##### Providing for non-legal advocacy services

Currently, the department funds Victoria Legal Aid to provide Independent Mental Health Advocacy (IMHA). IMHA is not established under the current Mental Health Act, although it is prescribed that an authorised psychiatrist cannot restrict an inpatient's right to communicate with IMHA. IMHA does not have other statutory rights or powers – for example, to access services or records.<sup>7</sup>

To better recognise non-legal advocacy, the Chief Officer for Mental Health and Wellbeing will be supported under the new Act to issue operating guidelines for these services. These guidelines will clarify and give effect to the obligations of mental health service providers to engage with non-legal advocacy services.

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<sup>6</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), pp. 396, 425.

<sup>7</sup> *Mental Health Act 2014* (Vic) s. 16(f).

## Recommendations by the Royal Commission about non-legal advocacy

**Non-legal advocacy is an important human rights protection. Non-legal advocacy can reduce feelings of disempowerment among consumers and is well regarded by consumers, even when they do not achieve their desired outcome. Despite this, access to non-legal advocacy is limited.<sup>8</sup>**

### What did the Royal Commission recommend about non-legal advocacy?

#### Recommendation 56(2)

The Royal Commission recommends that the Victorian Government:

2. include a legislative provision in the new Mental Health and Wellbeing Act enabling an opt-out model of access to non-legal advocacy services for consumers who are subject to or at risk of compulsory treatment.

## Points for feedback about non-legal advocacy



**Question 3:** Do you think the proposals meet the Royal Commission's recommendations about non-legal advocacy? If not, why?

**Question 4:** How do you think the proposals about non-legal advocacy could be improved?

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<sup>8</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 396.

## 3.2 What is changing in the new Act about supported decision making?

**No single strategy will ensure consumers are supported to make decisions; a concerted effort and multiple strategies are required to embed supported decision making in Victoria's future mental health and wellbeing system.<sup>9</sup>**

The new Act will take many approaches to meet the recommendation about supported decision making. The proposals aim to enhance supported decision making in key decisions being made under the new Act. These changes will strengthen a human rights-based culture in mental health services, as well as increasing oversight and monitoring of supported decision making.

Several other recommendations about system design and practice change, designed to promote consumer autonomy, can also support this. In particular, the Mental Health Improvement Unit (within Safer Care Victoria) will:

- offer education and training programs on safeguards and supported decision making for consumers, families, carers and supporters, as well as the mental health workforce
- provide for advance statements and nominated persons registers
- support service providers to ensure consumers receive a statement of rights on entry to the service and to ensure the statement is provided in a range of languages and formats.<sup>10</sup>

The details of these supports will be determined in a separate process to developing the new Act, in collaboration with consumers, families, carers and supporters.

### Proposals to strengthen supported decision making

The new Act will promote tools that enable supported decision making. These include mechanisms such as statements of rights, advance statements, nominated persons and second psychiatric opinions.

The new Act will increase transparency and accountability of supported decision making. It will require a formal record of how a person's preferences have been considered and where they have been overridden during treatment.

The new Act aims to promote supported decision making throughout all aspects of a person's assessment, treatment and recovery. This means exploring supported decision making for all consumers, not just those on compulsory orders. It will also include stronger language about the obligation on decision-makers to consider the views and preferences of the consumer, their nominated person and other relevant people who must be consulted under the Act.

### Statement of rights

A statement of rights sets out a person's rights when receiving mental health services.

A statement of rights must be given to a person who is subject to compulsory assessment or treatment orders. It must also be explained to the person and they must be allowed to ask questions and have them answered.

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<sup>9</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 395.

<sup>10</sup> Ibid., p. 428.

**What will change under the new Act?**

The new Act will require a statement of rights to be given to consumers who are voluntarily admitted as inpatients. The person providing the statement must ensure the consumer understands their rights, which would be given effect via ongoing conversations about their rights and available supports.

The content and format of the statement of rights will not be prescribed in the new Act but will be developed in consultation with consumers and carers.

**Advance statements**

An advance statement allows a person to document their treatment preferences, in the event that they become a compulsory patient.

An authorised psychiatrist can override the preferences included in an advance statement in certain circumstances.<sup>11</sup> An authorised psychiatrist can make a substitute decision that overrides the consumer's advance statement if they are satisfied that the preferred treatment specified in the advance statement is not clinically appropriate or is not a treatment ordinarily provided by the designated mental health service.

**What will change under the new Act?**

While an authorised psychiatrist will be able to override an advance statement, additional measures will increase the transparency of this decision. These measures will require that:

- a consumer be provided with written reasons for a decision to override their treatment preferences
- these reasons be provided to any other person at the consumer's request.

Measures will also be included to require that:

- an advance statement can include preferences on a broader range of matters; for example, it could include instructions for culturally appropriate foods or mealtimes, or other requests
- a broader range of people will be able to witness the making of an advance statement.

**Nominated persons**

Nominated persons can be appointed to support a person if they are made subject to a compulsory assessment or treatment order.

The role of the nominated person is to provide the consumer with support and to help represent their interests. Representing someone's interests requires a subjective evaluation of their needs.

**What will change under the new Act?**

The new Act will require the nominated person to agree to support the person to make their own decisions and to help represent the views and preferences of the person, including views and preferences set out in any advance statement made by the person.

The new Act will also permit a broader range of people to witness the appointment of a nominated person.

**Second psychiatric opinions**

Although there is currently a right to request a second psychiatric opinion, delays can get in the way. The time it takes to assess a person and write a report means that some people are discharged from an inpatient unit before they even receive their second opinion.

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<sup>11</sup> *Mental Health Act 2014 (Vic)* ss. 71–73.

A person who is subject to a compulsory treatment order has a right to request a second psychiatric opinion regarding their order or their treatment. When provided, a second psychiatric opinion must be in the form of a written report.

Where an authorised psychiatrist does not accept a recommendation made by the second psychiatrist:

- their reasons for doing so must be explained to the consumer
- they must be advised of their right to seek review from the Chief Psychiatrist or to apply to the Mental Health Tribunal for their order to be revoked.

### **What will change under the new Act?**

The new Act will:

- allow more flexibility in how second opinions can be provided, with the consumer's consent, to support the timely provision of second opinions
- require that an authorised psychiatrist documents their reasons for not accepting the opinion of the second psychiatrist and provide a copy of these reasons to the consumer and any other person requested by the consumer.

### **Oversight and monitoring**

The Royal Commission identified limited oversight and no public reporting on how mental health services are complying with:

- the principles of the current Mental Health Act
- requirements to support consumers to make decisions
- providing treatment consistent with their expressed preferences.<sup>12</sup>

### **What will change under the new Act?**

The new Act will enable increased oversight of supported decision-making practices. Whether through the new Act or its supporting regulations, service providers will need to document:

- discussions about informed consent for treatment, or assessments that demonstrate a person could not provide informed consent
- efforts to support a consumer to make a decision
- decisions to act against a person's views and preferences as expressed by them at the time, or through their advance statement or nominated person. This includes how they considered:
  - the consumer's views and preferences
  - any alternatives reasonably available
  - a consumer's reasons for those views and preferences.

The department and Regional Mental Health and Wellbeing Boards will use this information to improve practices among service providers. The Mental Health and Wellbeing Commission will use it as part of its role in system oversight.<sup>13</sup>

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<sup>12</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 407.

<sup>13</sup> Ibid., pp. 428–429.

## Recommendations by the Royal Commission about supported decision making

### What did the Royal Commission recommend about supported decision making?

#### **Recommendation 56(4)**

The Royal Commission recommends that the Victorian Government:

4. align mental health laws over time with other decision-making laws with a view to promoting supported decision-making principles and practices.

### Points for feedback about supported decision making



**Question 5:** Do you think the proposals meet the Royal Commission's recommendations about supported decision making? If not, why?

**Question 6:** How do you think the proposals about supported decision making could be improved?

### 3.3 What is changing in the new Act about information collection, use and sharing?

**Consumers, service providers and families, carers and supporters have expressed the desire for a much more open, collaborative and seamless culture of information collection, use and sharing. This will lead to better service delivery and improved consumer outcomes and experiences.<sup>14</sup>**

As recommended by the Royal Commission, the new Act will keep and build on information collection, use and sharing provisions in the current Mental Health Act as well as making them simpler and clearer.

To support information collection, use and sharing, the new Act will also give consideration to:

- new information-sharing infrastructure
  - The Secretary of the department will have the power to establish new information-sharing systems and authorise people and entities to use them. The new Act will not set out the detailed design of these new systems. This will be determined in a separate process from developing the new Act, in collaboration with interested stakeholders.
- training, professional guidelines, standards and cultural change to support the new Act and appropriate changes in practice
  - The details of these supports will be determined in a separate process from developing the new Act, in collaboration with interested stakeholders.

#### Proposals about information collection, use and sharing in the new Act

The new Act will be guided by new principles for information collection and use, and information sharing. Other proposals in the new Act build on information sharing under the existing Mental Health Act to support the implementation of these principles.

#### New principles for information collection, use and sharing

The principles that will guide information collection and use under the new Act will include:

- providing consumers with access to their own information as soon as reasonably practicable after it is requested, as this underpins the rights, dignity and autonomy of consumers and empowers them to exercise those rights
- respect and dignity when recording consumer information
- respect for consumers' diverse backgrounds and needs
- accountability for high-quality information collection and use
- improving consumer experiences
- consumer consent and privacy
- providing safe, high-quality treatment and care
- supporting transitions between services or care levels, and integrated services
- the important role of families, carers and supporters and their need to access appropriate information and the importance of information sharing to promote and maintain their physical, emotional, cultural and psychological safety

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<sup>14</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 5: Transforming the system—innovation and implementation, Parl Paper No. 202, Session 2018–21 (document 6 of 6), p. 97.

- the right of Aboriginal and Torres Strait Islander people to self-determination and to have their information shared in a way that is culturally sensitive and considers their familial and community connections
- transparency between service providers and consumers in relation to information sharing.

### Increasing consumer access to their own information

**When consumers try to access their own information as allowed by legislation, this process can take a very long time. It does not provide an efficient way for consumers to check that the health information about them is accurate, up to date and fairly records their position and views. There are also inconsistent approaches in the redaction of information.<sup>15</sup>**

The new Act will enhance consumer access to their own information by enabling the Health Complaints Commissioner to issue guidelines to mental health and wellbeing providers on consumer access to information about a mental health and wellbeing service.

Consumers will be able to ask that a statement be included on their record if they disagree with the information in the record.

### Increased information sharing with families, carers or supporters

The new Act will create a duty for mental health service providers to share information with families, carers or supporters at defined points during a consumer's care or treatment, such as admission and discharge, with the consumer's consent. Consumers will also be able to provide further instructions about information sharing through an advance statement.

### Information sharing between services

The Royal Commission has recommended introducing a consent-driven approach to information sharing with both mental health and wellbeing services and individuals outside of the mental health and wellbeing system.

The new Act will allow information sharing for the redesigned system. This will include sharing with Ambulance Victoria in its role as first responder, and sharing across a larger range of services (such as housing or alcohol and other drug services) to provide a more seamless experience for consumers accessing multiple services.

New provisions will allow some basic information to be shared across the broader social service system. While consent for sharing basic information with the broader social service system will not be required, consumers will have the right to request that this information not be shared. More detailed information about consumers beyond this basic information will be able to be shared with the consumer's consent. The services that may receive information under this provision will be part of a further system design process and will be the subject of further consultation.

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<sup>15</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 5: Transforming the system—innovation and implementation, Parl Paper No. 202, Session 2018–21 (document 6 of 6), p. 82.

## Recommendations by the Royal Commission about information collection, use and sharing

### What did the Royal Commission recommend about information collection, use and sharing?

#### Recommendation 42(2)(g)

The Royal Commission recommends that the Victorian Government:

2. ensure the Mental Health and Wellbeing Act:
  - g. specifies the ways in which information about mental health and wellbeing may be collected and used.

#### Recommendation 30(4)

The Royal Commission recommends that the Victorian Government:

4. in addition to reforms to improve information sharing outlined in other recommendations, develop standards for services and practitioners to guide the sharing of appropriate information with families, carers and supporters.

#### Recommendation 61

The Royal Commission recommends that the Victorian Government:

1. develop policies, standards and protocols to enable the effective, safe and efficient collection and sharing of mental health and wellbeing information.
2. set expectations that mental health and wellbeing services will provide opportunities for consumers to contribute to the information held about them and gain easy access to it.
3. collaborate with consumers to introduce a consent-driven approach to information sharing with mental health and wellbeing services and individuals outside of the mental health and wellbeing system.

#### Recommendation 62(1)

The Royal Commission recommends that the Victorian Government:

1. develop, fund and implement modern infrastructure for Information and Communications Technology (ICT) systems, including:
  - a. a new statewide Electronic Mental Health and Wellbeing Record for mental health and wellbeing services to replace the current CMI/ODS;
  - b. a review of data items currently required for service delivery and system administration, the removal of unused items and the addition of new items that accurately reflect mental health service activity and consumer outcomes;
  - c. a new Mental Health Information and Data Exchange that allows interoperability between the proposed Mental Health and Wellbeing Record and other services' major ICT systems to support information sharing in real time within and across services and sectors;
  - d. a new user-friendly online consumer portal (web and mobile) connected to the Mental Health Information and Data Exchange that allows consumers to view key information about themselves and authorise sharing of information with members of their care team, including families, carers and supporters; and
  - e. a comprehensive data repository and associated clinical registries for mental health (within the recommended Mental Health Information and Data Exchange) that will support outcome measurement, future service planning, continuous improvement and mental health research.

## Points for feedback about information collection, use and sharing



**Question 7:** Do you think the proposals meet the Royal Commission's recommendations about information collection, use and sharing? If not, why?

**Question 8:** How do you think the proposals about information collection, use and sharing could be improved?

## 4 Treatment, care and support

This section provides an overview of the Royal Commission's recommendations about ensuring compulsory treatment is only used as a last resort; moving away from coercive practices; reducing the use of seclusion and restraint with the aim of elimination over a 10-year period; and regulation of chemical restraint.

The proposals in this section aim to address the Royal Commission's recommendations and improve the experiences of people receiving treatment, care and support in Victoria's mental health system.

### What will the changes to treatment, care and support mean for people?

#### People living with mental illness or psychological distress will:

- have the impact of compulsory treatment (including any distress or harm it might cause) taken into account before a temporary treatment order or a treatment order is made
- be provided with compulsory treatment only as a last resort after all other treatment and non-treatment options have been considered and excluded and when needed to prevent serious distress or serious and imminent harm to themselves or another person
- have factors such as trauma history taken into consideration when decisions about the use of restrictive interventions are being made
- have access to system-wide and service specific information about how compulsory treatment and restrictive interventions are being used
- be involved in the co-production of a plan to guide elimination of restrictive interventions within 10 years.

#### Families, carers and supporters will:

- in certain circumstances be involved in a conference before a treatment order extension is considered for their family member or the person they care for and support
- have access to system-wide and service-specific information about how compulsory treatment and restrictive interventions are being used
- be involved in the co-production of a plan to guide elimination of restrictive interventions within 10 years.

#### People working in the mental health and wellbeing service system will:

- have access to statutory guidance about how the principles of the new Act must be given effect in compulsory treatment decisions and in the use of seclusion and restraint (including chemical restraint)
- be involved in the co-production of a plan to guide elimination of restrictive interventions within 10 years
- be required to meet new obligations about use and reporting of seclusion and restraint (including chemical restraint)
- be required to consider the impact of compulsory treatment on a person when determining whether changed criteria for compulsory treatment are met
- be supported to move to more holistic models of treatment by potentially allowing for the authorisation of temporary treatment orders by a broader group of professionals.

**Providers of mental health and wellbeing services will:**

- be supported by new entities (like the proposed Collaborative Centre for Mental Health and Wellbeing) to work in ways that reduce the use of compulsory treatment and restrictive interventions.

## 4.1 What is changing in the new Act about compulsory assessment and treatment?

**The Royal Commission found that the rate and duration of compulsory treatment orders in the Victorian mental health system is too high.<sup>16</sup>**

**Despite aspirations behind the Mental Health Act and the introduction of the Mental Health Tribunal to reduce compulsory treatment, this has not been achieved.<sup>17</sup>**

To meet the Royal Commission’s vision of a more balanced mental health and wellbeing system, the redesigned system will move from a crisis-driven model to a system built around community-based services. Not all changes will be driven through legislation. Other system reforms also aim to enhance voluntary methods of treatment, care and support to meet people’s needs and preferences. For example, introducing a more diverse mix of treatment, care and support will provide greater access to therapeutic interventions and recovery-centred responses.

The redesigned service system will be further supported by practice change and workforce initiatives. This will be led by the new Mental Health Improvement Unit, working with mental health and wellbeing services to:

- increase consumer leadership and participation in all activities to reduce compulsory treatment
- support the design and implementation of local programs, informed by data, to reduce compulsory treatment
- make available workforce training on non-coercive options for treatment that is underpinned by human rights, safety and supported decision-making principles.

The new Act will support related reforms through using modern, human rights–focused principles and establishing stronger system oversight over publicly funded mental health and wellbeing services.

### Proposals about compulsory assessment and treatment in the new Act

#### Strengthening principles and accountability

As outlined in section 2 of this paper, the objectives and principles of the new Act will set clear expectations that:

- compulsory treatment is to be used only as a last resort
- treatment, care and support should always be provided with the least possible restrictions on people’s rights.

There will also be principles relating specifically to the use of compulsory treatment. These principles will require decision-makers to consider the impact of compulsory treatment on the person receiving it, in particular, for people who may have experienced trauma.

<sup>16</sup> State of Victoria, Royal Commission into Victoria’s Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 364.

<sup>17</sup> Ibid., p. 409.

The new Act will require that any distress and harm that compulsory treatment itself may cause be considered in the decision to issue a compulsory treatment order. In addition, any compulsory treatment order will need to be made with the intent to ensure the person receives high-quality care, and with the aim of supporting recovery and moving towards non-coercive approaches to treatment and support.

### **Accountability**

The Mental Health and Wellbeing Commission will:

- issue statutory guidelines on how to apply the principles when making compulsory assessment and treatment orders
- be able to investigate and monitor the use of compulsory treatment.

The Chief Officer for Mental Health and Wellbeing will set system-wide targets, including for reducing the use and duration of compulsory treatment.

Formal reporting requirements will be established under the new Act to help drive widespread change in the use of compulsory treatment. The department will publish meaningful service-level and system-wide data on the use and duration of compulsory treatment.<sup>18</sup>

### **Criteria for compulsory treatment**

Under the current Mental Health Act the following criteria must be met to make a compulsory temporary treatment order or a treatment order:

- the person has mental illness
- because the person has mental illness, they need immediate treatment to prevent:
  - serious deterioration in the person’s mental health or physical health, or
  - serious harm to the person or another person
- the immediate treatment will be provided if an order is made
- there is no less restrictive way to enable the person to receive that immediate treatment.

### **What will change under the new Act?**

The new Act will require that other treatment and non-treatment supports, which could be reasonably provided to a person to reduce the risk of distress or harm, be considered during assessment prior to making an order. Such supports may include, for example, talking therapies, peer support, specialist trauma services, respite services or referral to services to address specific needs such as for housing.

The criteria for compulsory treatment will change. The changes being proposed are:

- replacing reference to ‘preventing serious deterioration in the person’s mental or physical health’ with ‘preventing the person experiencing serious distress’
- requiring that the harm being prevented (to the person or another person) must be both serious and imminent
- requiring that all other treatment and support options to prevent the distress or harm have been considered and eliminated.

Statutory guidance will be issued to provide clarity about the harms to be prevented and how decision-makers can be satisfied that compulsory treatment is being used as the last resort.

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<sup>18</sup> State of Victoria, Royal Commission into Victoria’s Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 423.

## Authorisation of compulsory treatment

Under the current Mental Health Act, authorised psychiatrists make temporary treatment orders that have a maximum duration of 28 days.

If a person remains on a temporary treatment order for 28 days, the Mental Health Tribunal must conduct a hearing to determine whether to make a treatment order for the person.

The Mental Health Tribunal also hears and determines applications for extensions to treatment orders.

### What will change under the new Act?

The Royal Commission outlined a vision for a more holistic system, rather than a system that often focuses on a 'biomedical model' of treatment and decision making.<sup>19</sup>

#### Mental Health Tribunal

The new Act will allow the Mental Health Tribunal to require that a conference be held ahead of the Tribunal considering a treatment order extension. Consumers will be able to request that a conference be held. A conference will not be required if the consumer objects. The purpose of the conference is to facilitate more diverse input, shared decision making and enhanced understanding in relation to compulsory treatment by involving, where appropriate, the consumer, their family or carers and advocates, and the treating team.

The new Act may allow the Mental Health Tribunal to make, or not make, a treatment order when the criteria for compulsory treatment are met, and may reduce the maximum duration for community treatment orders to six months.

Rather than making further significant changes to the Mental Health Tribunal's role now, an independent review of its role will be undertaken in line with the Royal Commission's recommendation. Noting the Royal Commission's view that, in the short term, large-scale reform could risk undermining systemic reforms to prevent the use of compulsory treatment and reduce its use and duration.<sup>20</sup>

#### Use of regulation to enable further changes

To support a shift to a more holistic system, there may need to be changes to the process and people involved in authorising temporary treatment orders. This could include permitting a broader range of professionals to authorise temporary treatment orders, such as nurse practitioners and social workers.

The new Act and regulations will allow for greater flexibility about who may be authorised to make a temporary treatment order, with permitted persons to be prescribed in regulations. Further consultation will be undertaken in developing regulations to consider the benefits and workforce and operational issues that might arise through alternative approaches.

## Promoting cultural change to support the dignity of risk

The mental health workforce carries a significant burden of community expectations about how risk is managed, which can lead to more risk-averse decision making. Much of the change needed to address this issue will require a systemic cultural shift and broad public education to reduce stigma and misconceptions about mental illness.

In developing the new Act, consideration will be given to how the new Act or regulations can include measures to provide confidence to decision-makers who make treatment and care decisions that are

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<sup>19</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 1: A new approach to mental health and wellbeing in Victoria, Parl Paper No. 202, Session 2018–21 (document 2 of 6), p. 306.

<sup>20</sup> Ibid., p. 433.

consistent with the principles, the broader vision for Victoria’s mental health and wellbeing system, and allow for dignity of risk.

## Recommendations by the Royal Commission about compulsory assessment and treatment

### What did the Royal Commission recommend about compulsory treatment and assessment?

#### Recommendation 42(2)(e-f)

The Royal Commission recommends that the Victorian Government:

2. ensure the Mental Health and Wellbeing Act:
  - e. specifies measures to reduce rates and negative impacts of compulsory assessment and treatment, seclusion and restraint.
  - f. simplifies and clarifies the statutory provisions relating to compulsory assessment and treatment such that they are no longer the defining feature of Victoria’s mental health laws.

#### Recommendation 53(2)(b)

The Royal Commission recommends that the Victorian Government:

2. facilitate the Mental Health and Wellbeing Commission to monitor, as a matter of priority, the:
  - b. use of compulsory treatment.

#### Recommendation 55(1-2)

The Royal Commission recommends that the Victorian Government:

1. act immediately to ensure that the use of compulsory treatment is only as a last resort.
2. set targets to reduce the use and duration of compulsory treatment on a year-by-year basis and gather and publish service-level and system-wide data in this regard.

## Points for feedback about compulsory treatment and assessment



**Question 9:** Do you think the proposals meet the Royal Commission’s recommendations about reducing the use and negative impacts of compulsory assessment and treatment? If not, why?

**Question 10:** How do you think the proposals about compulsory treatment and assessment could be improved?

## 4.2 What is changing in the new Act to reduce the rates and negative impacts of seclusion and restraint?

**The Commission is recommending that the Victorian Government acts to reduce the use of seclusion and restraint with the aim of eliminating these practices within 10 years. The workforce overwhelmingly does not want to use restrictive practices, but the drivers of their use are complex and they are sometimes necessary to protect the safety of the consumer or others. The Commission is recommending a range of measures to ensure that in working towards elimination, services are supported to understand the drivers in specific settings and to protect workforce safety while ensuring these interventions reduce over time.<sup>21</sup>**

Seclusion and bodily restraint are not therapeutic interventions. The psychological impacts can be significant, particularly for people who have experienced powerlessness or trauma. This is because restrictive interventions replicate the power, control and silencing of prior traumatic experiences and impact on a person's rights and sense of wellbeing in a way that can retraumatise the person.

'Chemical restraint' refers to using medication to control behaviour. The current Mental Health Act does not define or regulate the use of chemical restraint. As recommended by the Royal Commission, the new Act will define and regulate the use of chemical restraint to protect consumers and enable this practice to be appropriately monitored.

Outside of legislation, the Royal Commission also recommended other ways to reduce the rates and negative impacts of seclusion and bodily restraint. System redesign and oversight mechanisms in the new Act can support efforts to implement and monitor change including:

- a 10-year strategic plan to guide elimination of restrictive interventions to be developed by the Chief Officer for Mental Health and Wellbeing and co-produced with consumers, families, carers, the workforce and service providers
- the Chief Officer for Mental Health and Wellbeing establishing targets and managing system changes that will contribute to reductions
- the Chief Officer for Mental Health and Wellbeing working with consumers, the workforce, service providers and the Mental Health and Wellbeing Commission to develop a comprehensive suite of measures that capture the use of seclusion and restraint and ensuring this data is published regularly in an accessible format
- practice improvement and support from the Mental Health Improvement Unit in Safer Care Victoria to providers of acute mental health inpatient services to eliminate the use of seclusion and restraint, and to embed trauma-informed care as part of practice.<sup>22</sup>

The 10-year timeline acknowledges that there are systemic changes and supports needed to make sure these changes are safe for consumers and the workforce. This will require a strong and ongoing partnership between consumers, carers, the workforce, service providers and government.

### Proposals about seclusion and restraint in the new Act

#### Greater transparency on the use of seclusion and restraint as a last resort

The new Act will regulate the use of seclusion and restraint. This will ensure that, whenever they are used, these incidents are subject to rigorous oversight and are formally recorded and monitored. This provides the

<sup>21</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 538.

<sup>22</sup> Ibid., p. 346.

basis for review, investigation and accountability in what should increasingly become exceptional circumstances.<sup>23</sup>

The new Act will:

- acknowledge the harm caused by restrictive interventions and the shared responsibility for their elimination
- require clinicians to balance consideration of the harm likely to be caused by a restrictive intervention with the harm sought to be prevented by it when contemplating its use
- require clinicians to document the alternative treatments and supports that were tried or considered and the reasons why they were found unsuitable.

The Mental Health and Wellbeing Commission will issue statutory guidelines on how the principles should be interpreted and applied in relation to seclusion and restraint and receive and respond to complaints about seclusion and restraint, monitor their use and, when necessary, conduct inquiries into restrictive practices.

The objectives and principles of the new Act will also require that service providers consider factors that may impact on the person's experience such as the person's age, disability, culture, neurodiversity, language, religion, race, gender, gender identity, sexual orientation and trauma history, in considering alternative strategies and the use of restrictive interventions.

### **Accountability**

Many entities across the system will be responsible for progressing the objective to reduce and ultimately eliminate the use of seclusion and restraint:

- The Chief Officer for Mental Health and Wellbeing will be required to set system-wide targets, including for reducing the use of seclusion and restraint.
- The Mental Health and Wellbeing Commission will receive complaints, monitor progress and compliance and have a power to audit or investigate the use of seclusion and restraint, and report to parliament on the progress against the objectives.
- The department and Chief Officer for Mental Health and Wellbeing, and Regional Mental Health and Wellbeing Boards, will need to progress the objectives through system management and planning functions and will also have a role in data collection and monitoring.

### **Regulation of chemical restraint**

Regulation of chemical restraint will bring this practice under similar authorisation, oversight and reporting requirements to other restrictive interventions already regulated.

The Royal Commission has recommended that the new Act introduce similar requirements as the Tasmanian model for regulating chemical restraint (refer to Table 1).

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<sup>23</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 341.

**Table 1: Tasmania’s Mental Health Act 2013**

Tasmanian model	What does the Tasmanian model say about chemical restraint?
<b>Chemical restraint definition</b>	Chemical restraint is defined broadly as ‘medication given primarily to control a person’s behaviour, not to treat a mental illness or physical condition’. The definition excludes medication given to treat a mental illness or physical condition that may have a sedating effect.
<b>Tasmanian Chief Psychiatrist guideline (which all services must adhere to)</b>	The Tasmanian Chief Psychiatrist’s guideline provides that chemical restraint may only be lawfully used when ‘absolutely necessary, and when less restrictive interventions have been tried without success, or have been considered but excluded as inappropriate or unsuitable in the circumstances’.

The new Act will include a definition of chemical restraint that restricts its use to only as a last resort.

Definitions like those used in Tasmania are based on the intent of the clinician in prescribing medication as described by the Royal Commission. This can be difficult to determine when medications have strong sedative effects.<sup>24</sup>

It is proposed that the way chemical restraint is regulated, including through clinical guidelines, considers both the clinical intent and the impact of chemical restraint on the consumer. This will be complemented by activities that aim to better understand prescribing practices and support clinicians and services to ensure medications are not being inappropriately used.

As recommended by the Royal Commission, and consistent with the approach described above for monitoring and driving a reduction in the use of seclusion and restraint generally, the Chief Officer for Mental Health and Wellbeing will work with public mental health services and other relevant stakeholders to set targets, develop, monitor and report on appropriate measures, and work towards eliminating the use of chemical restraint.

Recommendations by the Royal Commission about reducing the rates and negative impacts of seclusion and restraint, and the regulation of chemical restraint

**The Royal Commission views the regulation of seclusion and restraint within a redesigned system as a protection, not permission. Its use should be eliminated as an accepted practice.<sup>25</sup>**

**What did the Royal Commission recommend about measures to reduce the rates and negative impact of seclusion and restraint and the regulation of chemical restraint?**

**Recommendation 42(2)(e)**

The Royal Commission recommends that the Victorian Government:

- 2. ensure the Mental Health and Wellbeing Act:
  - e. specifies measures to reduce rates and negative impacts of compulsory assessment and treatment, seclusion and restraint.

<sup>24</sup> State of Victoria, Royal Commission into Victoria’s Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 333.

<sup>25</sup> Ibid., p. 342.

**Recommendation 53(2)(a)**

The Royal Commission recommends that the Victorian Government:

2. facilitate the Mental Health and Wellbeing Commission to monitor, as a matter of priority, the:
  - c. use of seclusion and restraint.

**Recommendation 54**

The Royal Commission recommends that the Victorian Government:

1. act immediately to reduce the use of seclusion and restraint in mental health and wellbeing service delivery, with the aim to eliminate these practices within 10 years.
2. regulate the use of chemical restraint through legislative provisions in the new Mental Health and Wellbeing Act.
3. ensure the Chief Officer for Mental Health and Wellbeing develops and leads a strategy to reduce the use of seclusion and restraint.
4. enable the Mental Health Improvement Unit within Safer Care Victoria to co-design with mental health and wellbeing services and people with lived experience a range of programs and supports aligned with the strategy that focus on:
  - a. working with each mental health and wellbeing service to investigate local data and practices in order to identify priority areas for change;
  - b. making workforce training available for services; and
  - c. continuing to support services to embed Safewards.

Points for feedback about seclusion and restraint



**Question 11:** Do you think the proposals meet the Royal Commission's recommendations about reducing the use and negative impacts of seclusion and restraint, and regulation of chemical restraint? If not, why?

**Question 12:** How do you think the proposals about seclusion and restraint could be improved?

## 5 Governance and oversight

This section provides an overview of proposed changes to governance and oversight in the new Act that aim to strengthen collaboration, leadership and oversight of Victoria's mental health system.

As outlined, the Mental Health Tribunal will continue to form a critical part of the redesigned system. The Community Visitors safeguarding function will also continue in the new Act. The Royal Commission also recommended new roles and functions that are not expected to be legislated, including the Mental Health Improvement Unit in Safer Care Victoria.

**Transforming Victoria's mental health and wellbeing system requires strong system leadership and accountability, including the leadership of people with lived experience.<sup>26</sup>**

The new Act will establish the following new roles or entities:

- Mental Health and Wellbeing Commission
- Chief Officer for Mental Health and Wellbeing
- Regional Mental Health and Wellbeing Boards
- Statewide and Regional Multiagency Panels.

Figure 1 outlines how these new roles and entities fit together, and some of the other entities they work with. This diagram is a snapshot of relevant governance components only and does not include all the roles and entities that make up the redesigned mental health system in Victoria.

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<sup>26</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 77.

**Figure 1: Snapshot of key governance and oversight functions in Victoria’s redesigned mental health system**



**What will the changes to governance and oversight mean for people?**

**People living with mental illness or psychological distress will:**

- be able to make a complaint to the Mental Health and Wellbeing Commission if the principles of the new Act have not been complied with – the Mental Health and Wellbeing Commission will have powers to conciliate matters, make recommendations, accept undertakings or issue compliance notices to service providers to respond to issues arising from complaints
- benefit from the Mental Health and Wellbeing Commission’s role in holding government to account for the performance and quality and safety of the mental health and wellbeing system
- benefit from Regional Boards commissioning mental health and wellbeing services in a way that recognises and responds to the needs and preferences of their local communities
- benefit from Regional Multiagency Panels bringing service providers together to support collaboration and accountability in providing integrated services to consumers
- have a voice in decision making in their region with lived experience representation on Regional Boards and Regional Multiagency Panels.

**Families, carers and supporters will:**

- be able to make a complaint to the Mental Health and Wellbeing Commission if the principles of the new Act have not been complied with; or in relation to their experiences as a family member, carer

or supporter – the Mental Health and Wellbeing Commission will have powers to conciliate matters, make recommendations, accept undertakings or issue compliance notices to service providers to respond to issues arising from complaints

- have a voice in decision making in their region, with lived experience representation on Regional Boards and Regional Multiagency Panels.

**People working in the mental health and wellbeing service system will:**

- receive support from the Mental Health and Wellbeing Commission to understand the importance of complaints and build capacity to respond effectively to complaints and make changes that improve people's experiences and outcomes
- benefit from the Mental Health and Wellbeing Commission's role in advising government on system-wide challenges and concerns.

**Providers in the mental health and wellbeing service system will:**

- be able to support their workforces in providing high-quality mental health and wellbeing services by accessing guidelines and other information provided by the Mental Health and Wellbeing Commission and the Chief Officer for Mental Health and Wellbeing
- benefit from Regional Boards commissioning mental health and wellbeing services in a way that recognises and responds to the needs and preferences of their local communities
- benefit from the Regional Multiagency Panels bringing together different service providers to support collaboration and accountability in providing integrated treatment, care and support to consumers
- be required to meet the new governance and reporting requirements.

## 5.1 What is changing in the new Act about governance and oversight?

### Proposed changes to existing roles

#### Chief Psychiatrist

As recommended by the Royal Commission, it is proposed that the Chief Psychiatrist continues to focus on clinical leadership and oversight of specific mental health and wellbeing practices and report to the new Chief Officer for Mental Health and Wellbeing.<sup>27</sup>

To address the gap in oversight identified by the Royal Commission, the jurisdiction of the Chief Psychiatrist will be expanded to correctional settings.<sup>28</sup> Mental health services provided in correctional settings will be subject to the Chief Psychiatrist's standards, oversight, monitoring and reporting.

### Proposed new entities

#### Mental Health and Wellbeing Commission

The Mental Health and Wellbeing Commission will:

- have responsibility for system-wide oversight of the quality and safety of mental health service delivery
- monitor and report on system-wide quality
- respond to complaints about mental health and wellbeing service delivery
- inquire into system-wide quality and safety challenges or concerns
- advise government on areas of concern and areas for improvement
- play a key role in monitoring achievement of some of the Royal Commission's key goals, such as reducing the use of compulsory treatment and coercive practices
- be led by a small group of Commissioners including at least one Commissioner with lived experience of mental illness or psychological distress and one Commissioner with lived experience as a family member or carer.

As recommended by the Royal Commission, it is proposed that the current powers of the Mental Health Complaints Commissioner transfer to the new Mental Health and Wellbeing Commission, including:

- investigating complaints, making recommendations to service providers, accepting an undertaking from a provider to take remedial action, or issuing a compliance notice if the provider has not complied with this undertaking or has acted in contravention of the new Act
- working with services to understand the importance of consumer complaints and to build the capacity to respond to complaints in a way that achieves positive outcomes
- using the insights into the quality and safety of mental health and wellbeing service delivery captured through complaints to initiate and inform reviews and inquiries.

The new Mental Health and Wellbeing Commission will have a broader remit than the current Mental Health Complaints Commissioner, with its quality, oversight and complaint handling functions extending to all providers funded by the Victorian Government to deliver mental health and wellbeing treatment, care and support. This will include services delivered by public health, community health, non-government and private

<sup>27</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 277.

<sup>28</sup> Ibid., p. 277.

organisations. It will also cover delivery in hospitals, the community, public and private prisons, and police cells.<sup>29</sup>

In addition, the new Mental Health and Wellbeing Commission will have the power to:

- initiate 'own motion' investigations
- consider complaints from families, carers and supporters in relation to their experiences as a family member, carer or supporter
- receive complaints about noncompliance with the new Act's principles.

The Mental Health and Wellbeing Commission will be required to report to parliament on:

- the performance and quality and safety of the mental health and wellbeing system, including performance against targets to eliminate the use of seclusion and restraint
- performance of its functions, including those relating to complaints, investigations and inquiries.

The Mental Health and Wellbeing Commission will advise parliament and relevant ministers on areas of concern and areas for improvement in the quality and safety of mental health service delivery and will have the power to make recommendations to the Premier, any minister and heads of public service bodies.

### **Chief Officer for Mental Health and Wellbeing**

Establishing the role of Chief Officer for Mental Health and Wellbeing in the new Act is intended to elevate the status of mental health and wellbeing within the department and strengthen leadership of the mental health and wellbeing system. The proposed role of the Chief Officer for Mental Health and Wellbeing will include:

- developing mental health and wellbeing strategy, policy and guidelines
- planning, developing and commissioning mental health and wellbeing services that respond to Victoria's diverse communities
- monitoring the performance, quality and safety of mental health and wellbeing service providers
- developing and supporting the mental health and wellbeing workforce
- supporting the new Regional Mental Health and Wellbeing Boards to perform their functions
- setting and revising targets for reducing compulsory treatment/seclusion and restraint
- implementing the Royal Commission's recommendations.

### **Regional Mental Health and Wellbeing Boards**

The Royal Commission recommended that Victoria's mental health and wellbeing system be designed around eight regions, with a Regional Mental Health and Wellbeing Board established to oversee the delivery of high-quality and safe services in each region. The department will continue to plan, fund and monitor statewide services.

Regional Mental Health and Wellbeing Boards will:

- support mental health and wellbeing services to be planned and organised in a way that responds to community needs and improves outcomes
- provide a platform for greater integration across services beyond the mental health and wellbeing system, including both Victorian Government and Commonwealth Government funded services

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<sup>29</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 280.

- be established under the new Act – as an intermediary step, eight time-limited interim regional bodies will be established to provide advice to the department as it plans, develops, coordinates, funds and monitors a range of mental health and wellbeing services in each region
- be skills-based, inclusive of people with lived experience of mental illness or psychological distress as consumers and family members or carers. This will ensure that the views, experiences and perspectives of people with lived experience inform planning and resourcing decisions, driving progress towards a system that recognises and responds to the differing needs of consumers.

Implementing the functions of the Regional Mental Health and Wellbeing Boards will be staged over several years, consistent with the recommendations of the Royal Commission. This will allow for partnerships to be developed between the department, new entities and service providers, as well as their respective communities.

The department will remain the primary funder and manager of Victoria's mental health and wellbeing system and will take on the role of strategic commissioner. The department will set clear expectations in relation to how Regional Mental Health and Wellbeing Boards undertake their functions.

### **Statewide and Regional Multiagency Panels**

Regional Multiagency Panels will be established in each region. The panels will be one component of support available to the group of consumers who need and benefit from ongoing intensive treatment, care and support. Regional Multiagency Panels will be established under the new Act to help ensure the reform endures, and is funded, as a continuing function in Victoria's redesigned mental health and wellbeing system.

Regional Multiagency Panels will:

- bring together different service providers to support collaboration and accountability in providing integrated treatment, care and support to this group of consumers
- have diverse membership, which varies across regions and between meetings based on local needs and services and the needs of individual consumers
- not usually oversee the care of individual consumers, although they may be used on occasion to support a consumer whose coordination needs cannot be met through the care coordination function. Where appropriate, this will be done in partnership with the person, as well as family, carers and supporters
- provide strategic advice to Regional Mental Health and Wellbeing Boards and the department regarding broader policy or service delivery matters related to people who require ongoing intensive treatment, care and support from multiple agencies.

As suggested by the Royal Commission, a statewide panel will be legislated and chaired by the Chief Officer for Mental Health and Wellbeing, comprising the chairs of each Regional Multiagency Panel, to resolve complex issues requiring a system-level response.

### **Collaborative Centre for Mental Health and Wellbeing**

The Collaborative Centre for Mental Health and Wellbeing was a recommendation of the Royal Commission's interim report. Led by a skills-based board, the Collaborative Centre will bring together people with lived experience and a broad range of multidisciplinary experts and researchers to deliver adult mental health and wellbeing services to a local population and to develop, translate and share best practice across the system.

To ensure the Collaborative Centre can begin operations as soon as possible, it is intended that it be established in standalone legislation ahead of the new Mental Health and Wellbeing Act.

## Royal Commission recommendations about governance and oversight

### What did the Royal Commission recommend about the Mental Health and Wellbeing Commission?

#### Recommendation 44(1)

The Royal Commission recommends that the Victorian Government:

1. establish an independent statutory authority, the Mental Health and Wellbeing Commission, to:
  - a. hold government to account for the performance and quality and safety of the mental health and wellbeing system;
  - b. support people living with mental illness or psychological distress, families, carers and supporters to lead and partner in the improvement of the system;
  - c. monitor the Victorian Government's progress in implementing the Royal Commission's recommendations; and
  - d. address stigma related to mental health.

#### Recommendation 53

The Royal Commission recommends that the Victorian Government:

1. enable the Mental Health and Wellbeing Commission (refer to recommendation 44) to use its full suite of complaints and oversight functions (refer to recommendation 44(3)) to monitor, inquire into and report on system-wide quality and safety.
2. facilitate the Mental Health and Wellbeing Commission to monitor, as matters of priority, the:
  - a. use of seclusion and restraint;
  - b. use of compulsory treatment;
  - c. incidence of gender-based violence in mental health facilities; and
  - d. incidence of suicides in healthcare settings.
3. enable the Mental Health and Wellbeing Commission to:
  - a. work with the Department of Health and relevant regulators to build a comprehensive understanding of quality and safety issues in mental health and wellbeing services;
  - b. ensure on an ongoing basis that complaints-handling and investigation approaches:
    - meet the needs of consumers, families, carers, and supporters and
    - support services to resolve concerns;
  - c. advise government on issues of concern and areas for improvement; and
  - d. record, report and publish service-level complaints and other relevant data and information.

### What did the Royal Commission recommend about the Chief Officer for Mental Health and Wellbeing?

#### Recommendation 45(1-2)

The Royal Commission recommends that the Victorian Government:

1. establish in legislation the role of Chief Officer for Mental Health and Wellbeing to lead the Mental Health and Wellbeing Division in the Department of Health, and set out in that legislation that this Chief Officer is:
  - a. delegated the functions and powers conferred on the Secretary of the Department of Health under the new Mental Health and Wellbeing Act;
  - b. appointed by and reports to the Secretary; and
  - c. at the level of a Deputy Secretary.
2. empower the Chief Officer to take responsibility for the implementation of the Royal Commission's recommendations, unless otherwise stated in these recommendations.

### What did the Royal Commission recommend about the Regional Mental Health and Wellbeing Boards?

#### Recommendation 4(2-4)

The Royal Commission recommends that the Victorian Government:

2. by no later than the end of 2023, replace interim regional bodies with legislated Regional Mental Health and Wellbeing Boards to:
  - a. undertake workforce, service and capital planning for mental health and wellbeing services; and
  - b. lead engagement with their respective communities.
3. from the end of 2023 and by no later than the end of 2026, enable each Regional Mental Health and Wellbeing Board also to:
  - a. commission mental health and wellbeing services; and
  - b. hold individual providers to account to improve the outcomes and experiences of people who use their services.
4. in parallel with the establishment process, ensure that Regional Mental Health and Wellbeing Boards:
  - a. acquire and maintain the required skills and capabilities to perform the above functions;
  - b. are accountable for the delivery of agreed outcomes through new accountability arrangements; and
  - c. are skills-based and include at least one person with lived experience of mental illness or psychological distress and one person with lived experience as a family member or carer.

### What did the Royal Commission recommend about Regional Multiagency Panels?

#### Recommendation 4(5)

The Royal Commission recommends that the Victorian Government:

5. with the assistance of the interim regional bodies, establish a multiagency panel in each region to coordinate as required the delivery of multiple mental health and wellbeing services for people living with mental illness or psychological distress, including children and young people, who may require ongoing intensive treatment, care and support.

### Points for feedback about governance and oversight



**Question 13:** Do you think the proposals meet the Royal Commission’s recommendations about governance and oversight? If not, why?

**Question 14:** How do you think the proposals about governance and oversight could be improved?

## 6 Summary and next steps

### 6.1 What is the process for developing the new Act?

**The new Act will be responsive to the views, values and perspectives of the public, including those of the people living with mental illness or psychological distress, families, carers and supporters, that have been put to the Commission.<sup>30</sup>**

The new Act is being developed in line with the Royal Commission’s recommendations to make sure the voices heard through the Royal Commission are incorporated into the redesigned system.

The legislative process to create a new Act often takes between two and four years from start to finish. However, this new Act is required to be in place by the middle of 2022. Figure 2 gives a high-level overview of the stages for developing the new Act.

**Figure 2: Process for developing the new Mental Health and Wellbeing Act**



The department is engaging with people in a number of ways to translate the recommendations of the Royal Commission into the new Act, including through:

- a Mental Health and Wellbeing Act Expert Advisory Group to advise on policy and implementation issues required to deliver the new Act
- advice from clinical and lived experience experts to support development of the new Act
- feedback through this paper, which is available on Engage Victoria from 15 June to 4 July 2021.

**It is essential that crucial features of the new Mental Health and Wellbeing Act are broadly supported and well understood by people living with mental illness or psychological distress, families, carers and supporters, as well as the workforce and the broader public. To achieve this,**

<sup>30</sup> State of Victoria, Royal Commission into Victoria’s Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 49.

**the views and perspectives of those who are affected by the legislation must be considered throughout the development and implementation of the new Act.<sup>31</sup>**

## Mental Health and Wellbeing Act Expert Advisory Group

The department has established an Expert Advisory Group to help guide development and delivery of the new Act. Members of the group bring diverse and significant expertise across multiple domains, incorporating lived experience, human rights, legal and non-legal advocacy, health law, health service governance and mental health and wellbeing service delivery. Expert Advisory Group members are:

- Mr Michael Gorton AM (Chair), Principal, Russell Kennedy Lawyers and Board Chair, Alfred Health
- Dr Anoop Lalitha, Director of Clinical Services, Ballarat Health Services
- Dr Chris Maylea, Deputy Chair, Victorian Mental Illness Awareness Council Committee of Management
- John Foley, board member, Tandem Carers
- Kristen Hilton, former Victorian Equal Opportunity and Human Rights Commissioner
- Laura Collister, CEO, Wellways
- Professor Lisa Brophy, La Trobe University, community member, Mental Health Tribunal
- Dr Margaret Grigg, CEO, Forensicare
- Nerita Waight, CEO, Victorian Aboriginal Legal Service
- Sandra Keppich-Arnold, Director of Mental Health and AOD Operations, Alfred Health.

## 6.2 What comes after the new Act?

### Implementation of the new Act

**On its own, a new Mental Health and Wellbeing Act will not deliver accessible mental health and wellbeing services, provide high-quality treatment care and support, nor properly equip the mental health workforce with the required skills. It will, however, form an important piece of architecture in Victoria's new mental health and wellbeing system that will support and enable people to attain good mental health and wellbeing.<sup>32</sup>**

The new Act is only one part of changing the system. The implementation of all the Royal Commission's recommendations will support Victoria's mental health system to adapt and improve.

The department will develop guidance materials on the new Act. These resources will be made readily available to help people understand the new Act, and how it might affect them, or their jobs, and the system.

Guidance and implementation will reflect the complexity of the mental health system in Victoria, which includes services delivered by public health, community health, non-government and private organisations. These services are delivered across a range of settings including in hospitals, the community, public and private prisons, and police cells.

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<sup>31</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 46.

<sup>32</sup> Ibid., p. 35.

## Review of the new Act

**Given the considerable impact that mental health legislation may have on human rights, autonomy and dignity, it is important that such legislation is regularly reviewed to assess whether it is working as intended.<sup>33</sup>**

**It is essential that the future review of mental health laws creates the space for people to share their stories, and have their experiences heard and acknowledged. This will be an important part of the evidence-gathering phase, creating a shared understanding of the impact of the legislation on the outcomes and experiences of consumers, and identifying opportunities for improvement.<sup>34</sup>**

The Royal Commission recommended that a review of the new Act be undertaken within five to seven years. The terms of reference of the review will be co-designed with consumers, families, carers and supporters. The Royal Commission describes the considerable impact that mental health legislation may have on human rights, autonomy and dignity, and the importance of regular review to make sure it is working as intended.<sup>35</sup>

The Royal Commission also specified a number of matters that should be considered as part of this review:

- the role and functions of the Mental Health Tribunal and Chief Psychiatrist, to see if any changes need to be made following service system redesign and the establishment of new oversight bodies
- aligning substituted decision-making frameworks for mental health with those for medical treatment decisions (under the *Guardianship Administration Act 2019* and *Medical Treatment Planning and Decisions Act 2016*) to minimise the circumstances in which a person who has decision-making capacity can have decisions about their treatment, care and support made by someone else
- making advance statements binding in all but very limited circumstances
- allowing consumers to appoint a nominated decision-maker to make substitute decisions for a person when they do not have capacity that can only be overridden in very limited circumstances.<sup>36</sup>

The new Act will require an independent review to be undertaken within the specified time period.

## Recommendations by the Royal Commission about next steps for the new Act

### What did the Royal Commission recommend about next steps for the new Act?

#### **Recommendation 43**

The Royal Commission recommends that the Victorian Government:

1. Commission an independent review of Victoria's mental health laws five to seven years after the enactment of the Mental Health and Wellbeing Act.
2. Co-design terms of reference for the review that focus on ensuring mental health laws remain contemporary, effective and responsive to the needs and preferences of consumers, families, carers and supporters.
3. As part of this review, consider the role and functions of the Mental Health Tribunal and Chief Psychiatrist to ensure they remain appropriate.

<sup>33</sup> State of Victoria, Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform, Parl Paper No. 202, Session 2018–21 (document 5 of 6), p. 47.

<sup>34</sup> *Ibid.*, p. 48.

<sup>35</sup> *Ibid.*, p. 47.

<sup>36</sup> *Ibid.*, pp. 429–430.

## Glossary

Term	Definition
<b>Advance statement</b>	Statement that allows a person to document their treatment preferences, in the event that they become a compulsory patient.
<b>Assessment order</b>	An order that authorises a person to be compulsorily examined by an authorised psychiatrist to determine whether the treatment criteria, specified in the <i>Mental Health Act 2014 (Vic)</i> , apply to the person.
<b>Carer</b>	A person, including a person under the age of 18 years, who provides care to another person with whom they are in a relationship of care.
<b>Compulsory treatment</b>	Treatment of a person for mental illness subject to an order under the <i>Mental Health Act 2014 (Vic)</i> , the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)</i> or the <i>Sentencing Act 1991 (Vic)</i> . This can include the administration of medication, hospital stays, electroconvulsive treatment or neurosurgery for mental illness.
<b>Consumer</b>	A person who identifies as having a living or lived experience of mental illness or psychological distress, irrespective of whether they have a formal diagnosis, have used mental health services and/or received treatment, care or support.
<b>Mental health system</b>	Services (with various funders and providers) that have a primary function of providing treatment, care or support to people living with mental illness and/or their carers.
<b>Nominated person</b>	The formal nomination of a person under the <i>Mental Health Act 2014 (Vic)</i> by a person to provide them with support and help and to represent their interests and rights at times when they are at risk of receiving compulsory treatment or are receiving compulsory treatment. The nominated person also receives information from the authorised psychiatrist at certain points and is consulted as part of decision-making processes under the current Act.
<b>Restraint</b>	Restraint refers to bodily restraint. This is a form of physical or mechanical restraint that prevents a person having free movement of their arms or limbs., but does not include the use of furniture (including beds with cot sides and chairs with tables fitted on their arms) that restricts the person's ability to get off the furniture
<b>Restrictive interventions</b>	Restrictive intervention refers to seclusion or bodily restraint.
<b>Royal Commission</b>	Refers to the Royal Commission into Victoria's Mental Health System.
<b>Seclusion</b>	The sole confinement of a person to a room or any other enclosed space from which it is not within the control of the person confined to leave.
<b>Statement of rights</b>	A statement that sets out a person's rights when receiving mental health services under the new Act.
<b>Statutory authority</b>	An entity set up by law that is authorised to enact legislation.
<b>Supported decision making</b>	The process that supports a person to make and communicate decisions with respect to personal or legal matters. This may be achieved by offering consumers access to a variety of tools and resources such as non-legal advocates and peer workers.
<b>Temporary treatment order</b>	An order made under the <i>Mental Health Act 2014 (Vic)</i> by an authorised psychiatrist following an examination under an assessment order that requires a person to be provided with compulsory treatment.

Term	Definition
<b>The current Act</b>	<i>Mental Health Act 2014</i>
<b>The department</b>	Refers to the Victorian Department of Health.
<b>The new Act</b>	A new Mental Health and Wellbeing Act will replace the <i>Mental Health Act 2014 (Vic)</i>
<b>Treatment order</b>	An order made under the <i>Mental Health Act 2014 (Vic)</i> by the Mental Health Tribunal following a period of treatment under a Temporary Treatment Order that requires a person to be provided with compulsory treatment.