Emergency Departments and the *Mental Health Act* 2014

27 May 2014
Outline of information session

• Objectives and key principles of the *Mental Health Act 2014*

• Compulsory assessment and treatment

• Restrictive interventions in the Emergency Department

• Police, mental health patients and ED attendance

• Ambulance transport and mental health patients
Objectives of the MHA 2014

• assessment and treatment of persons with mental illness
• least restrictive and least possible restrictions on rights and dignity
• enable and support persons to make or participate in decisions about their assessment, treatment and recovery and to exercise their rights
• provide oversight and safeguards
• recognise the role of carers
The Mental Health Principles guide the provision of mental health services:

- Assessment and treatment provided in the least restrictive way possible
- People are supported to make or participate in decisions about assessment, treatment and recovery including decisions that involve a degree of risk
- Rights, dignity and autonomy to be respected and promoted
- Holistic care (mental and physical health needs including alcohol and other drugs) that is responsive to individual needs
- Best interests of children and young persons receiving mental health services to be promoted
- Needs, wellbeing and safety of children, young persons and other dependents to be protected
- Carers to be involved in decisions about assessment, treatment and recovery whenever possible
A mental health service provider must have regard to the mental health principles:

- when providing mental health services
- in performing any duty or function or exercising any power under the Act
Compulsory assessment and treatment pathway

The Mental Health Act 2014:

• promotes **voluntary treatment** in preference to compulsory treatment

• seeks to **minimise the use and duration of compulsory treatment** to ensure that the treatment is provided in the least restrictive and least intrusive manner possible

• establishes compulsory treatment orders comprising:
  
  o **Assessment Orders**
  
  o **Temporary Treatment Orders**
  
  o **Treatment Orders**
Criteria for Assessment Orders:

- person appears to have mental illness
- the person appears to need immediate treatment to prevent serious deterioration in the person’s mental or physical health or serious harm to the person or another person
- if the person is made subject to an Assessment Order the person can be assessed
- there is no less restrictive means reasonably available to have the person assessed.
Assessment Order may be made by a **mental health practitioner or a registered medical practitioner**

**Community** – maximum 24 hours

**Inpatient:**
- Maximum 72 hours for purpose of transport
- Maximum 24 hours when person received at designated mental health service (authorised psychiatrist or delegated psychiatrist can extend up to two times up to a total of 72 hours)

**Mental health practitioner** is a registered nurse, registered psychologist, registered occupational therapist or social worker employed by a designated mental health service

*See circulated flow chart on Assessment Orders*

*See form: MHA 101 Assessment Order*
Designated mental health service

Designated mental health service is:

- Albury Wodonga Health
- Alfred Health
- Austin Health
- Ballarat Health Service
- Barwon Health
- Bendigo Health Care Group
- Eastern Health
- Goulburn Valley Health
- Melbourne Health
- Mercy Public Hospitals Incorporated
- Monash Health
- Latrobe Regional Health
- New Mildura Base Hospital
- Peninsula Health
- South West Healthcare
- St Vincent’s Hospital (Melbourne) Limited
- The Royal Children’s Hospital
- Victorian Institute of Forensic Mental Health
Treatment may be provided to a person on an Assessment Order:

- with consent

- where urgent treatment is required to prevent serious deterioration in the person’s mental or physical health or serious harm to the person or to another person.
Criteria for **Temporary Treatment Order** and **Treatment Orders** (treatment criteria):

- person **has** mental illness
- the person **needs immediate treatment to prevent serious deterioration** in the person’s mental or physical health **or serious harm** to the person or another person
- the **immediate treatment will be provided** if the person is made subject to an Order
- there is **no less restrictive means reasonably available** to enable the person to receive the immediate treatment.
**Temporary Treatment Orders:** Made by authorised psychiatrist
Community or Inpatient (maximum duration of 28 days)

**Treatment Orders:** made by **Mental Health Tribunal**
- Community (maximum duration 12 months – adult; maximum duration 3 months person <18 years)
- Inpatient (maximum duration 6 months – adult; maximum duration 3 months person <18 years)

**Setting** (inpatient or community) **may be varied by authorised psychiatrist**
as clinically appropriate

Authorised psychiatrist must **immediately revoke an order when the criteria no longer apply** to the patient.
• s351 *Mental Health Act 2014* replaces s10 *Mental Health Act 1986* empowering police to **apprehend** a person who appears to have mental illness

• Police must arrange for the person to be **taken** to a registered medical practitioner or mental health practitioner for examination

• The registered medical or mental health practitioner will decide whether to make an **Assessment Order**

• The Act **enables police to release** the person from their custody into the care of a hospital **where there are no significant safety risks or concerns**
• Ambulance paramedics can now administer **sedation** to mental health patients under the direction of a registered medical practitioner or if it is within their normal scope of practice.

• Arrangements are being considered to enable Non-Emergency Patient Transport (NEPT) to be used where reasonable and safe to do so.
Supported decision making is central to recovery-oriented practice.

The *Mental Health Act 2014* enables compulsory patients to make decisions about their treatment and to determine their individual path to recovery.

Practitioners to support patients to make or participate in decisions about their treatment.
• The *Mental Health Act 2014* includes a **presumption of capacity** to make treatment decisions regardless of age or legal status.

• A person **has capacity to give informed consent** if the person:
  o **understands** the information he or she is given
  o is able to **remember** the information
  o is able to **use or weigh** information
  o is able to **communicate** the decision he or she makes.
The **Mental Health Act 2014** includes **principles to provide guidance around determining capacity** (s 68(2))

Capacity to give informed consent is **specific to the decision** that needs to be made.

A person’s capacity to give informed consent **may change over time**.

It should not be assumed that a person lacks capacity to give informed consent based only on their age, appearance, condition or behaviour.

A determination that a person lacks capacity to give informed consent should not be made only because the person makes a decision that could be considered unwise.

A capacity assessment should occur at a time and in an environment in which a person’s capacity can be most accurately assessed.
The *Mental Health Act 2014* sets out the **elements of informed consent**

A person gives informed consent if the person has:

- **capacity to give informed consent** to the treatment
- **been given adequate information** to make an informed decision
- **been given a reasonable opportunity** to make the decision
- **given consent freely** without undue pressure or coercion
- **not withdrawn consent** or indicated any intention to withdraw consent
What if the patient does not have capacity or does not give informed consent to a course of treatment?

Authorised psychiatrist can make a treatment decision (except ECT & NMI)

There must be no less restrictive way for the patient to be treated

In determining **least restrictive treatment** authorised psychiatrist must consider:

- patient’s views and preferences (including in advance statement)
- views of nominated person, guardian, carer, parent of patient <16
- likely consequences for the patient if proposed treatment is not performed
- any second psychiatric opinion.
An **advance statement** enables a person to record their **treatment preferences** in the event that they become unwell and require compulsory mental health treatment.

**Advance statements:**

- can be made at any time provided a person **understands** what an advance statement is and the consequences of making it
- must be **signed, dated and witnessed** by an authorised witness which includes registered medical practitioner, mental health practitioner, person authorised to witness statutory declarations
- will be flagged on CMI to assist services to know if there is an advance statement available
Advance statements

• must be considered whenever a substitute treatment decision is made

• can be overridden if the preferred treatment is not clinically appropriate or not ordinarily provided by the mental health service
  
  o written reasons for overriding an advance statement must be provided within 10 days of a request for such reasons

• can be revoked at any time either by:
  
  o making a revocation; or
  
  o making a new advance statement
A person can nominate a person to receive information and support them while they are a compulsory patient.

A nominated person:

- must be willing, available and able to fulfill the functions and responsibilities of the nominated person
- may be under 18
Nominated persons

A nomination:

• can be made or revoked at any time provided the person understands what a nomination is and the consequences of making or revoking it

• must be in writing, signed and dated by the person making the nomination and witnessed by an authorised witness which includes registered medical practitioner, mental health practitioner, person authorised to witness statutory declarations

• must include a statement from the nominated person saying they agree to be the nominated person

A nominated person may decline the nomination at any time.
Statement of rights

must be provided to patients, nominated person, carer and parent if patient is <16 at key points, for example:

• when Assessment Order is made
Restrictive interventions

- restrictive interventions are **seclusion and bodily restraint** (bodily restraint is mechanical restraint and physical restraint)

- **Seclusion** means 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;

- **Bodily restraint** means a form of physical or mechanical restraint that prevents a person having free movement of his or her 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.
Restrictive interventions

• Restrictive interventions reporting under the Act apply to persons receiving mental health services in a designated mental health service

• in an ED, this means persons subject to an order under the Mental Health Act 2014 e.g. an Assessment Order, Temporary Treatment Order or Treatment Order, but not persons apprehended by police and in ED under s.351

• must only be used after all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable

• must **immediately be stopped** if it is no longer necessary

• person’s needs must be met and dignity protected by the provision of appropriate facilities and supplies
Bodily restraint

Bodily restraint must be authorised by an authorised psychiatrist or a registered medical practitioner or senior registered nurse on duty if the authorised psychiatrist is not immediately available.

Registered nurse may approve the use of physical restraint if:

• urgently required to prevent imminent and serious harm to the person or another person and

• none of the above people are immediately available to authorise the restraint.
Bodily restraint – observation requirements

- A mental health patient on a compulsory order (includes Assessment Order) receiving mental health services in a DMHS on whom bodily restraint is used must be under **continuous observation** by a registered nurse (RN) or registered medical practitioner (RMP)

- RN or RMP must **clinically review** the use of bodily restraint as frequently as appropriate but **not less than every 15 minutes**

- Authorised psychiatrist must **examine** a person on whom a bodily restraint is used as frequently as appropriate but **not less than every 4 hours**
Restrictive interventions – reporting

The use of restrictive interventions within a designated mental health service must be reported to the Chief Psychiatrist.

*Forms: MHA 140 Authority for restrictive intervention*
*MHA 141 Approval for urgent physical restraint*
*MHA 142 Restrictive interventions observations*
Mental Health Complaints Commissioner

• will be a dedicated specialist complaints body
• will accept, assess, manage, investigate and endeavour to resolve complaints about publicly funded mental health service providers

MHCC will provide guidance to health services about complaint processes and requirements
Oversight and service improvement

**Chief Psychiatrist** – will provide clinical leadership, support and advice to public mental health service providers informed by:
- clinical audits
- clinical reviews
- reportable deaths

**Community Visitors**
- Will visit, provide support and monitor public mental health services
Disclosure of health information

The Mental Health Act 2014 mandates when patient’s mental health information must be disclosed and to whom, for example:

- to carers where a decision will directly affect the carer or the care relationship
- to nominated persons, guardians and parents of patients <16

The Mental Health Act 2014 also sets out when information may be disclosed, for example:

- to carers - when it is required for a carer to be able to perform, or prepare for, their caring role

An ehandbook is being developed which will provide guidance on the Mental Health Act 2014 and its requirements.
• Mental Health Act Reform webpage:  

• Enquiry Line: 1300 656 692

• Email: mhactreform@health.vic.gov.au
Scenario 1 - Mark

Mark is 22 years old and brought to the ED by friends who are concerned he is acting strangely. On assessment there is evidence of auditory hallucinations, complex delusions and thought disorder including a belief that he is the ‘instrument’ responsible for clearing the area of drug addicts (if necessary, using violence).

There is no known history of drug use or organic condition. Mark does not believe that he is unwell and is unwilling to accept treatment.
Scenario 1 - Mark

- Mark appears to have mental illness
- He appears to need immediate treatment to prevent serious deterioration in his mental health and/or harm to others
- If Mark is made subject to an Assessment Order, he can be assessed
- There is no less restrictive means reasonably available to assess Mark
- Because the assessment criteria apply, an Assessment Order can be made to enable Mark to be assessed to determine whether he requires compulsory mental health treatment
- Mark can receive treatment while on the Assessment Order if he consents or if it is urgently required to prevent serious deterioration or harm
- If an authorised psychiatrist determines that the treatment criteria apply to Mark, he can be placed on a Temporary Treatment Order and receive compulsory mental health treatment
Rebecca is brought to ED by ambulance. The ambulance is accompanied by police due to safety reasons, however police have not used their powers under section 351 of the Act.

Rebecca was acting strangely and assaulting people on the street. There is a strong suspicion that Rebecca has been using ice.

Rebecca remains uncooperative and violent.
Scenario 2 - Rebecca

- Rebecca’s behaviour is probably drug related. There is nothing to indicate that Rebecca appears to have mental illness.
- Rebecca can be held in the ED under duty of care while health needs are being assessed.
- Rebecca is not receiving mental health services – so the reporting requirements for the use of restrictive interventions (if required) do not apply.
- When she is sufficiently settled to be examined, it may become clear that Rebecca appears to have co-existing mental illness.
- If this is the case and **all** the assessment criteria apply to Rebecca, it may be appropriate to make an Assessment Order.
Scenario 3 - Julio

- Julio is brought to the ED by police under section 351 of the Act.
- He appears substance affected and is acting very strangely.
- He was apprehended by police outside the home of his former partner threatening violence against her and her family and threatening to kill himself as life is not worth living.
- Julio is still kicking and yelling in the police van and does not cooperate with efforts to settle him down.
- It is necessary to use physical restraint in order to get Julio into the ED.
- Clinical staff use mechanical restraint so that he can be assessed for an Assessment Order.
Use of restraint:

- If bodily restraint is used by police or ambulance paramedics to facilitate safe transport to the hospital, they are not required to report under the Act.
- If clinical staff use bodily restraint in the ED to enable Julio to be assessed for an Assessment Order, it will be done under ‘duty of care’ and they are not required to report under the Act.
- If an Assessment Order is made and bodily restraint is used the bodily restraint must be recorded and reported to the Chief Psychiatrist.
Scenario 3 - Julio

- Julio must be under continuous observation by a registered nurse or registered medical practitioner while being bodily restrained.
- Registered nurse or registered medical practitioner must clinically review not less than every 15 minutes.
- Authorised psychiatrist must examine a person on whom a bodily restraint is used at least every 4 hours.
- Observations must be recorded on MHA 142 – Restrictive Interventions Observations form.
- If Julio has a nominated person, guardian, or carer or parent if he is aged under 16, they must be notified of the use of bodily restraint.
- The restraint must immediately be stopped if it is no longer necessary.