

# Factsheet – Custodial settings

Office of the Chief Psychiatrist

**OFFICIAL**

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## Summary

Forensic mental health and wellbeing services provide assessment and treatment of people with a mental illness or disorder and a history of offending, or those who are at risk of offending.

The role of the Chief Psychiatrist is to promote the highest standards of clinical practices and care and promote the rights of persons receiving mental health and wellbeing services.

With the introduction of the *Mental Health and Wellbeing Act 2022* (the Act) on 1 September 2023, the Chief Psychiatrist’s powers and responsibilities of oversight have expanded to include custodial settings where forensic mental health and wellbeing services are provided.

The Chief Psychiatrist’s expanded jurisdiction will include specialist mental health care provided within prisons, youth justice centres as well as youth residential centres and remand centres. Refer to the Act, Part 1.2 – Interpretation, Section 3 – Definitions.

From 1 September, oversight by the Chief Psychiatrist will commence in specialist mental health and wellbeing services provided by Forensicare and Orygen. These locations will come under the oversight of the Chief Psychiatrist and be subject to reporting requirements.

## About Custodial settings

In June 2022, the prison population of Victoria was approximately 6,569<sup>1</sup>. In Victoria, the imprisonment rate has almost doubled over the past 20 years. In 2019 the rate was 123 prisoners per 100,000 people compared with 62 per 100,000 in 1998 (and 38 per 100,000 people in 1977)<sup>2</sup>.

People living with mental illness are significantly overrepresented in custody. Recent surveys of prisoner health indicate 61 percent of people entering Victorian prisons had a diagnosed mental illness and 35 percent of Victorian prisoners were referred to a prison mental health service<sup>3</sup>.

Prisoners are two to three times more likely to have a mental illness and 10 and 15 times more likely to have a 'psychotic disorder' than someone in the community<sup>4</sup>.

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

The definition of clinical mental health service providers has changed in the Act to specifically include mental health and wellbeing providers in custodial settings:

Part 1.2 – Interpretation, Section 3 – Definitions

***clinical mental health service provider*** means—

- (a) a designated mental health service; or
- (b) *a mental health and wellbeing service provider that provides mental health and wellbeing services in a custodial setting; or*
- (c) any other prescribed entity or prescribed class of entity.

## Royal Commission – related recommendation(s)

The Royal Commission into Victoria's Mental Health System made recommendations on how to improve mental health outcomes for people in contact, or at greater risk of contact, with the criminal justice, forensic mental health and youth justice systems.

The details of their findings and relevant recommendations are documented in the Final Report Volume 3, Chapter 23: Improving Mental Health outcomes across the criminal justice, forensic mental health and youth justice systems, p345.

## What this change means

As of 1 September 2023, specialist mental health services provided by Forensicare and Orygen in prison and youth justice settings will be under the oversight of the Chief Psychiatrist.

These specialist mental health services will be required to report and notify reportable deaths, sexual safety incidents in bed based mental health services, and reporting the use of chemical restraint to the Chief Psychiatrist.

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<sup>1</sup> Victorian Sentencing Advisory Council, [Victoria's Prison Population | Sentencing Council](#)

<sup>2</sup> Royal Commission into Victoria's Mental Health System, Final Report, Volume 3: Promoting Inclusion and addressing inequities, p350

<sup>3</sup> Royal Commission into Victoria's Mental Health System, Final Report, Volume 3: Promoting Inclusion and addressing inequities, p352

<sup>4</sup> Ibid

The Chief Psychiatrist's clinical guidelines and reporting directives have been updated to include these settings as the Act commences on 1 September 2023.

The Office of the Chief Psychiatrist will be partnering with Corrections Victoria, Youth Justice, and Justice Health to support the mental health and wellbeing service delivery to prisoners and remandees. This will include a focus on the use of restrictive interventions for those receiving mental health care within prison and youth justice settings.

## Practice guidelines and reporting directives

Information regarding best practice guidelines, reporting and notification obligations in custodial settings for mental health and wellbeing service providers are contained within the Chief Psychiatrist's guidelines:

- [Chief Psychiatrist's reporting directive: Reporting restrictive Interventions](#)
- [Chief Psychiatrist's guideline: Improving sexual safety in mental health and wellbeing services](#)
- [Chief Psychiatrist's reporting directive: Sexual safety incidents](#)
- [Chief Psychiatrist's reporting directive: Notification of reportable deaths to the Chief Psychiatrist](#)

These documents can be found on the [Health Department's website](#). It outlines the reporting obligations of mental health and wellbeing services, the timing, and mechanisms by which services must notify the Chief Psychiatrist of incidents in custodial settings.

## Further information

Further information on custodial settings is available on the [Health Department's website](#).

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

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

## Disclaimer

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

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

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