

Conducting an examination under the Mental Health and Wellbeing Act 2022

Chief Psychiatrist's guideline – September 2023

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Purpose

To provide guidance about what is an examination, and how should an examination be conducted under the *Mental Health and Wellbeing Act 2022* (the Act).

Under the Act, examining under the Act is defined as:

Section 8: Examining under this Act

- (1) If a provision of this Act or the regulations requires that a person be examined, the person must be examined—
 - (a) if it is practicable—in person; or
 - (b) if it is not practicable—remotely.
- (2) For the purposes of determining whether it is not practicable to conduct an examination in person, regard must be had to any relevant guidelines issued by the chief psychiatrist.

Mental health and wellbeing principles

Part 1.5 of the *Mental Health and Wellbeing Act 2022* contains mental health and wellbeing principles that include promoting and protecting the dignity and autonomy of people living with mental illness or psychological distress. Mental health and wellbeing service providers must make all reasonable efforts to comply with the mental health and wellbeing principles when exercising a function under the Act (s 29(a)) and must give proper consideration to the principles when making a decision under the Act (s 29(b)).

Principles of an examination

Under this guideline, generally speaking, for all examinations:

- An examination should be conducted in person if it is practicable to do so (s8).
- An examination should occur as soon as practicable.
- (a) The person conducting the examination must identify themselves to the consumer and explain the process and reason for the examination (ss 144(3), 159(2), 174(2), 190(2)).
- The person conducting the examination should have access to contemporary and relevant information to help inform decision making.
- (b) An examination should consider factors including socioeconomic, family, physical health (including substance use), cultural, gender, sexual orientation, age and developmental stage.
- An examination should consider supported decision-making principles and the preferences of the consumer and their families, carers and supporters.
- (c) The person conducting the examination must ensure documentation is provided to the consumer in a timely way (ss 159(2), 174(2), 190(2)).
- The person conducting the examination should abide by all decision-making principles for treatment and intervention (in Part 3.1 of the Act) including the following principles:
 - care and transition to less restrictive support (s 79)
 - (a) consequences of compulsory assessment and treatment and restrictive interventions (s 80)

- no therapeutic benefit to restrictive interventions (s 81)
- (b) balancing of harm and autonomy (ss 82 and 83).

An examination is an intervention and should be part of a collaborative individual treatment and recovery plan, when appropriate.

Types of examination

The Act specifies that examinations must occur in several circumstances. The Act prescribes the clinician who conducts the examination – for example, an authorised psychiatrist or, registered medical practitioner (if directed by the Authorised Psychiatrist) in relation to restrictive interventions (s 137(4) and (5)). The Act also prescribes the frequency – for example, when monitoring a person subject to restrictive interventions (s 137(4)) – and the time frames in which the examination must occur – for example, when making an assessment order (s 144(1)).

The length of the examination and the information gathered may vary based on the purpose and circumstance of the examination. For example, if a person is acutely unwell and at immediate risk in the community, the examination conducted before making an assessment order (s 144) may be brief. However, the examination a psychiatrist conducts when providing a second opinion (s 70) will be longer and more in-depth.

Examinations must be conducted as fairly, transparently and comprehensively as possible aligned with the decision-making principles in the Act (which can be found in Part 3.1 of the Act) and the Mental health and wellbeing principles (set out in Part 1.5 of the Act).

Telehealth under this guideline

The Chief Psychiatrist considers that 'examination' for the purposes of the Act could include using telehealth (videoconference or telephone) to enable examination to occur without unreasonable delay. However, remote examination using telehealth should only occur when it is not practicable for the person to be examined in person (as per s 8(1)(b) of the Act). A clinical staff member should always be present with the consumer when a clinician is conducting a telehealth review.

Situations where it would be reasonable to determine that examination is not practicable, and therefore that remote examination using telehealth may be used include when:

- making an assessment order where a patient has presented to a local hospital with no on-site availability of an authorised mental health practitioner or a registered medical practitioner examining a person subject to an assessment order by an authorised psychiatrist to ascertain whether they meet criteria for a temporary treatment order when the authorised psychiatrist cannot be on site
- applying for a treatment order to the Mental Health Tribunal for a person who is currently subject to a treatment order that is due to expire when the person cannot be examined in person and when the person is known to the mental health service.

The Royal Australian and New Zealand College of Psychiatrists accepts telehealth as a legitimate tool for diagnostic and treatment purposes and has developed [practice standards and guidelines](https://www.ranzcp.org/clinical-guidelines-publications/in-focus-topics/telehealth) for its use <<https://www.ranzcp.org/clinical-guidelines-publications/in-focus-topics/telehealth>>.

Mental health services must develop their own policies and procedures to guide clinicians in using telehealth.

Table 1: Mental Health and Wellbeing Act 2022: Examinations

Act section	Purpose of examination	Who can do the examination? ¹
s 70	When a psychiatrist is giving a second opinion	The psychiatrist who is giving the second opinion
s 73	If the second opinion report prepared under s 72 expresses the opinion that the criteria for the relevant order do not apply to the eligible patient (other than a forensic patient)	The authorised psychiatrist must examine the eligible patient as soon as practicable after receiving a copy of the report and determine whether the criteria for the relevant order apply.
s 76	Within 10 business days after receiving an application to review the treatment of a patient under s 75(1)	The Chief Psychiatrist may examine the eligible patient for the purposes of the review (s 76(2)(a)).
s 134	To determine if the continued use of the restrictive intervention is necessary to achieve a purpose specified in s 127	<p>If an authorised psychiatrist has authorised the use of the restrictive intervention: The authorised psychiatrist, as soon as practicable after authorising the intervention, must examine the person (s 134(1)).</p> <p>If someone other than the authorised psychiatrist authorised the use of the restrictive intervention: The authorised psychiatrist, as soon as practicable after being notified of the authorisation, must examine the person (s 134(3)).</p> <p>If the authorised psychiatrist is not reasonably available to examine the person, the authorised psychiatrist must ensure the person is examined by a registered medical practitioner as soon as practicable (s 134(4)).</p>
s 137	Monitoring of a person subject to a restrictive intervention	An authorised psychiatrist must examine a person subject to a restrictive intervention as often as the authorised psychiatrist is satisfied is appropriate in the circumstances to do so but not less frequently than every 4 hours (s 137(4)). If it is not practicable for an authorised psychiatrist to examine at the frequency that the authorised psychiatrist is satisfied is appropriate, the person must be examined by a registered medical practitioner when directed by the authorised psychiatrist (s 137(5)).
s 144	To make an assessment order	A registered medical practitioner or an authorised mental health practitioner Noting that:

¹ Section 329 of the Act enables an authorised psychiatrist, by instrument, to delegate functions or powers (including those related to examinations under the Act) to a psychiatrist (or other specified classes of person). Section 329(2) also enables an authorised psychiatrist to delegate, by instrument the power to examine a person subject to an assessment order to a registered medical practitioner who is employed or engaged by a designated mental health service.

Act section	Purpose of examination	Who can do the examination? ¹
		<ul style="list-style-type: none"> • The examination must have happened within the previous 24 hours and led the practitioner to be satisfied that the compulsory assessment criteria apply to the person (s 144(1)). • Before the examination, the practitioner must identify themselves to the person, inform them that the person will be examined by the practitioner and take all reasonable steps to explain the purpose of the examination to them (s 144(3)). • The assessment order must contain the date and time the practitioner examined the patient before making the order (s 148(c)).
s 159	To determine whether the compulsory treatment criteria apply to the patient	<p>An authorised psychiatrist for the responsible designated mental health service must examine an assessment patient as soon as practicable – after the assessment order is made (for a community assessment order) or after the person has been received at the responsible designated mental health service (for inpatient assessment orders).</p> <p>Noting that:</p> <ul style="list-style-type: none"> • Before the examination, the authorised psychiatrist must identify themselves to the assessment patient, inform them that they will be examined under the order, take all reasonable steps to explain the purpose of the examination to them and, if they request a copy of the order, ensure they are given one (s 159(2)). • If a temporary treatment order is made it must contain the date and time that the authorised psychiatrist examined the patient before making the order (s 184(3)). • The person who made the assessment order cannot be the person who examines and makes the temporary treatment order s180(3).
s 174	To determine whether the compulsory treatment criteria apply to a court assessment patient	<p>An authorised psychiatrist must examine a court assessment patient as soon as practicable after the order is made (for a community court assessment order) or after the person has been received at the designated mental health service (for an inpatient court assessment order).</p> <p>Noting that:</p> <ul style="list-style-type: none"> • Before the examination, the authorised psychiatrist must identify themselves to the court assessment patient, inform them that they will be examined under the order, take all reasonable steps to explain the purpose of the examination to them and, if they request a

Act section	Purpose of examination	Who can do the examination? ¹
		<p>copy of the order, ensure they are given one (s 174(2)).</p> <ul style="list-style-type: none"> • If a temporary treatment order is made it must contain the date and time that the authorised psychiatrist examined the patient before making the order (s 184(3)). • The person who made the assessment order cannot be the person who examines and makes the temporary treatment order s180(3).
s 190	To determine whether the compulsory treatment criteria still apply to the treatment patient for the purposes of applying to the Mental Health Tribunal for another treatment order	<p>Authorised psychiatrist</p> <p>Noting that:</p> <ul style="list-style-type: none"> • Before the examination, the authorised psychiatrist must identify themselves to the treatment patient, inform them that they will be examined, take all reasonable steps to explain the purpose of the examination to them and, if they request a copy of the current treatment order, ensure they are given one (s 190(3)). • The date and time of the most recent examination that the authorised psychiatrist has conducted on the treatment patient must be specified on the application (s 191(b)).
s 234	When an authorised person (who is a police officer, a protective services officer) takes a person in a mental health crisis into their care and control	<p>An authorised person who takes a person into care and control under s 232(1) must arrange for the person to be examined as soon as practicable, by a registered medical practitioner, or an authorised mental health practitioner.</p> <p>This should occur at or near the place at which the person was taken into care and control (s 234(a)) or by transporting the person to a specified body at which the person may be examined by a registered medical practitioner or an authorised mental health practitioner (s 234(b)) or transfer care and control of the person in accordance with ss 234 or 235 to another authorised person for the purposes of arranging for the person to be examined as soon as practicable (236(c)).</p>
s 535	To produce a report to enable the Justice Secretary to make a secure treatment order	A psychiatrist
s 540	To produce a report to enable the Justice Secretary to make a direction that a person who is subject to a court secure treatment order be taken from a prison or other place of confinement and transported to a designated mental health service	A psychiatrist

Act section	Purpose of examination	Who can do the examination? ¹
s 579	To determine whether the intensive monitored supervision order criteria apply to the patient for the purposes of enabling the authorised psychiatrist of the Victorian Institute of Forensic Mental Health ('Forensicare') to apply for an intensive monitored supervision order	Authorised psychiatrist of Forensicare Noting that: <ul style="list-style-type: none"> An application for an intensive monitored supervision order must be accompanied by a report by the authorised psychiatrist specifying the date on which the authorised psychiatrist last examined the patient (s 580(1)(a)(iii)).
s 587	Where a patient is subject to an intensive monitored supervision order	An authorised psychiatrist must examine the patient as frequently as the authorised psychiatrist considers appropriate but not less than every 24 hours or, if it is not practicable for the authorised psychiatrist to do so, they must ensure another registered medical practitioner does (s 597(4)).
s 598	To determine whether the compulsory assessment criteria apply to an interstate person who has been transported to a registered medical practitioner or authorised mental health practitioner in Victoria	The registered medical practitioner or authorised mental health practitioner
s 606	To determine whether a person who is compulsorily detained in an interstate mental health facility under a corresponding law or who is subject to a corresponding order should be made subject to a temporary treatment order (if they have been approved by the authorised psychiatrist of a designated mental health service to be transported to Victoria)	The authorised psychiatrist The examination must occur at a designated mental health service or in the community as soon as practicable after they enter Victoria.
s 608	To determine whether a person (who is absent from leave or other lawful authority from an interstate mental health facility in a participating state or territory and has been taken into the care and control of Victoria) requires treatment before being returned	An authorised psychiatrist

Further information

An electronic copy of the *Mental Health and Wellbeing Act 2022* can be viewed on the [Victorian legislation and parliamentary documents website](http://www.legislation.vic.gov.au) <www.legislation.vic.gov.au>.