Mental Health Bill
Question and Answers

1. Who can make an Assessment Order for a person?

A registered medical practitioner (for example a general practitioner) or a mental health practitioner can make an Assessment Order for a person.

A mental health practitioner is a registered psychologist, registered nurse, social worker or registered occupational therapist who is employed or engaged by a designated mental health service.

Any registered medical practitioner, whether they are in private practice or employed or engaged by a designated mental health service, may make an Assessment Order.

2. Take for example a severely depressed 17 and a half year old who needs and wants ECT and has capacity, but his parents have a belief system which says no. Can the parents block access to the Tribunal?

If a young person aged 17 and a half has capacity and has given informed consent to ECT then the psychiatrist can make an application to the Tribunal for approval to perform ECT without requiring parental consent.

There is no obligation in the Bill requiring a psychiatrist to consult with the parent of a young person 16 years of age or older if the young person has capacity. In fact, the psychiatrist would need to seek consent of the young person before discussing the young person's health information with the parents.

However, best practice would require the psychiatrist to encourage the young person to involve their parent in the young person's mental health treatment in order to provide them with support.

3. What if, in the same scenario, the young person *does not* have capacity to give informed consent to ECT?

If the young person is so depressed that ECT is necessary to prevent serious harm to the young person or serious deterioration in the young person's physical or mental health and there is no less restrictive way for the young person to receive treatment (such as the parents giving consent to an application for ECT being made to the Tribunal) then the psychiatrist may make an Assessment Order for the young person.

An authorised psychiatrist will then examine the young person and assess them against the treatment criteria. If the treatment criteria apply to the young person the authorised psychiatrist can make a Temporary Treatment Order for the young person and make an application to the Tribunal for the performance of ECT on the young person.

There is no requirement on the authorised psychiatrist to seek the consent of a parent before making application for a compulsory patient under 18 years of age.

If the young person was 15 years of age or younger the authorised psychiatrist would be obligated to seek the views of a parent about ECT but would not necessarily have to act in accordance with the parent's views.

At the hearing of the application for ECT, the Tribunal will take the views of the young person, the parent, and the young person's other key support people into account when determining whether ECT is the least restrictive treatment in the circumstances.

4. Would they need to go to the public sector? Or will provisions be made in the private sector?

Compulsory treatment may only occur in designated mental health services.

Designated mental health services are health services that are prescribed in the Mental Health Regulations 2014 to provide compulsory treatment.

The intention is that the health services that are currently proclaimed as 'approved mental health services' under the *Mental Health Act 1986* will be prescribed in the Mental Health Regulations 2014 to be designated mental health services.

There are currently no private hospitals or clinics proclaimed to be approved mental health services. However, the Bill does allow for private facilities to be proclaimed.

5. When can ECT be given in a private clinic or hospital?

ECT may be given in the private or public sector.

Where a young person is a compulsory patient ECT may be given in a private clinic if the young person's private psychiatrist liaises, and makes necessary arrangements with, the authorised psychiatrist responsible for the young person's compulsory treatment and care.

6. There is funding going to the public sector to support the implementation of the reforms.

The government is preparing guidelines and application forms and supporting documentation to ensure that all services can comply with the requirements of the new legislation upon commencement in July.

The government will not be providing funding to private clinics or private hospitals.

7. Will there be resources available to the private sector to facilitate access to ECT for young people?

There were only two young persons under 18 who received ECT in 2012–13. Furthermore, the government has removed the requirement to license premises where ECT is performed reducing the regulatory burden.

8. What are the things in the Bill that the members of AMA may not be happy about?

First, the administrative burden associated with Mental Health Tribunal hearings will increase compared to the current legislation. Hearings will be more frequent and the Tribunal's

jurisdiction has been broadened to include electroconvulsive treatment. The Bill also seeks to ensure patients are engaged and supported to meaningfully participate in decisions about their assessment, treatment and recovery and to exercise their rights. The Bill includes a range of legal mechanisms to enable patient involvement, including advance statements, nominated persons, second opinions and a presumption of capacity. Each of these will require increased clinical contacts with patients and their support people.

The Victorian Government has provided $2.85 million to health services to assist with local preparation and implementation of the Bill between January–June 2014. This will assist health services to update local systems, policies and procedures, release staff for training and recruit additional staff. The government wants to ensure that the transition to the new legislation is as smooth as possible.

In addition, the government will provide new recurrent funding of $5.8 million from 2014–15 to support health services to meet the new statutory requirements upon commencement. This funding, which will be indexed annually, will enable at least 40 to 50 new Full Time Equivalent positions to be recruited across the state.

The government recognises that clinicians already work in a collaborative way with patients and their support networks. The additional resources will support this existing good practice and provide new opportunities for psychiatrists and other members of the treating team to develop clinical practice in line with recovery principles.

Second, we know that in the AMA's view the doctor/patient relationship is the most important relationship. The government has taken a more holistic view of a person's treatment and recovery. Evidence tells us that patients generally have an improved experience of treatment and care resulting in stronger engagement with their treatment and better recovery outcomes when provided with supports. This approach is backed up by clinical advice from the section of psychiatry.

The government accepts that there are times when the views of the carer may not align with the patient's views about their treatment and care. However, the government considers that requiring that clinicians that are providing compulsory treatment should having regard to the views and preferences of key people who provide the patient with support strikes the right balance between patient autonomy and the objective of providing effective and timely assessment and treatment. In particular, the government believes carers should be consulted and given information where a decision will affect the carer or the care relationship for example, the provision of information relating to treatment and management options, how to respond to disturbing behaviours, how to access practical assistance and generally assisting carers to better support the person with mental illness.

Third the Bill requires mental health service providers to have regard to the needs, wellbeing and safety of dependents of persons with mental illness and in particular children and young persons. The government takes the view that the rights of children are paramount and that service providers should always recognise the needs of dependent children and seek to ensure they are addressed, perhaps by referral to other service providers.

9. What constitutes a change of treatment requiring the authorised psychiatrist to talk to a carer?

The Bill will involve support people in key decisions about the patient's assessment, treatment and recovery wherever possible including:

- when an authorised psychiatrist is determining whether the treatment criteria apply to a patient
- clinical milestones such as when the authorised psychiatrist is determining which treatments (medications) are provided to the patient and in what form (i.e. oral or injectable)
- in determining what is the least restrictive treatment
- when an authorised psychiatrist varies a Temporary Treatment Order or Treatment Order
- in determining whether a medical treatment (not mental health treatment) would benefit the patient
- when restrictive interventions (seclusion, physical and/or mechanical restraint) have been used
- in determining whether to grant a patient a leave of absence
- when a patient is being transferred to another designated mental health service to provide assessment or treatment
- when the second opinion psychiatrist is deciding whether to recommend any changes to the treatment.

Whenever the authorised psychiatrist is required to seek a patient's informed consent to a course of treatment, the authorised psychiatrist should be engaging with the patient's key support people, who will be supporting the patient in the decision-making process. In addition, copies of all Treatment Orders, and statements of rights provided to the patient will be provided to the support people.

It is not expected that the authorised psychiatrist would consult with carers about minor changes to treatment, for example adjustments to the dosage of a drug to achieve optimal results.

The Bill defines treatment for mental illness as 'things done to the person in the course of the exercise of professional skills – to remedy the mental illness or to alleviate the symptoms and reduce the ill effects of the mental illness.'

The Mental Health Tribunal will also be required to seek the views of the compulsory patient and the patient's key support people when determining whether to make a Treatment Order (and the treatment setting) and in determining whether ECT is the least restrictive treatment for a compulsory patient who does not have capacity to give informed consent to ECT.

9. The AMA understands there is funding to support the implementation of the Bill in public mental health services. How will you ensure that the funding goes to senior consultants and registrars?

The additional recurrent funding of $5.8m is to support health services to provide mental health services in compliance with the new legislation.

The government has funding agreements with health services that stipulate where the funding should be allocated. Funding is also connected with hospital performance against key performance indicators. However, government cannot dictate how hospitals allocate funding internally. Each hospital will make its own decisions about internal allocation of resources.

10. When a second opinion is required, what about the availability and timing of that?

The government has committed $1m in funding to enable patients to access second psychiatric opinions.

The government is working with the Royal Australian New Zealand College of Psychiatrists to establish a best practice framework and examine options on how funding may be allocated and access and eligibility criteria.

11. You've outlined more funding to implement this change in Victoria's mental health legislation, but there will be a greater administrative burden which will be ongoing. Is the government's funding commitment ongoing?

The $5.8m for public mental health services is recurrent funding, which will be indexed annually.