



## ***Communique***

### **Public Health Act 2016 (WA) Sections 157(1)(k) and 190(1)(p) Mental Health Infection Control Directions**

The World Health Organisation declared COVID-19 a pandemic on 11 March 2020.

On 23 March 2020, the Minister for Health declared a Public Health State of Emergency with effect from 1:30pm on 23 March 2020 in respect of COVID-19 pursuant to section 167 of the Public Health Act 2016 (WA) (Act). The Public Health State of Emergency applies to the State of Western Australia.

The current provisions of the WA Mental Health Act (MHA) 2014 are not necessarily sufficient to ensure the safety of practitioners when conducting mental health assessments or examinations of patients who have or are suspected of having COVID-19.

The Public Health Act 2016 allows directions to be made for the protection of the community and practitioners. These directions must be followed and they have the power to override certain sections in other legislation. In this case, this Direction overrides parts of the MHA 2014.

#### **What is this “Direction”?**

- It only applies when a person meets the risk factors for COVID-19, or has confirmed COVID-19, or if a practitioner is in isolation themselves.
- It only applies when this group of patients requires an assessment or examination under the MHA 2014 as listed below.
- It does not apply in any other circumstance.

The Deputy Chief Health Officer, Dr Robyn Lawrence has issued a formal Direction under the Public Health Act 2016 about how Medical Practitioners and Authorised Mental Health Practitioners (AMHPs) must assess individuals for referrals under the MHA 2014 and how Psychiatrists must examine individuals who are either already involuntary or being considered for involuntary status, as well as a list of other MHA assessments (listed below).

It is designed to ensure that this cohort of patients get proper access to assessment and examination around MHA 2014, but it's also designed to keep clinicians safe when they are assessing and examining individuals who might need or are under the MHA 2014.

**It only applies when a person meets certain risk factors for COVID-19, or has confirmed COVID-19, or if a practitioner is in isolation themselves.**

It does not apply generally. It relates to the sections of the MHA 2014 listed below.

It means, for these specified individual only, the assessment or examination **must** be done with either:

- Personal Protective Equipment
- Through a physical barrier (see and hear the person)
- From a safe distance (see and hear the person)
- Via audio visual equipment (see and hear the person)

### **Which parts of the MHA 2014 does this direction apply to?**

1. **section 48 – How assessment must be conducted** when clinicians are assessing people for **Form 1A** Referral for Examination by a Psychiatrist
2. **section 79 – How examination must be conducted** when examining individuals under section 77 in any of these circumstances:
  - a) **Form 6A, 6B or 6C**: by a psychiatrist because of a Form 1A - Referral for examination for involuntary inpatient care
  - b) **Form 3C**: by a psychiatrist because of a Form 3C - Continuation of Detention to enable a further examination by a psychiatrist
  - c) **Form 3D**: by a psychiatrist because of a Form 3D – Order authorising reception and detention in an authorised hospital for further examination
  - d) **Confirming in inpatient treatment order**: by a psychiatrist for the purpose of confirming an inpatient treatment order, where the inpatient treatment order was made when the psychiatrist and the patient were not in the physical presence of one another (i.e. the examination was done by audio visual means)
  - e) **Form 5A**: psychiatrist when making a Form 5A – Community treatment order without referral
  - f) **Monthly CTO assessments**: by a supervising psychiatrist when conducting the monthly examination required of a CTO
  - g) **Monthly CTO assessments**: by a medical practitioner or mental health practitioner when conducting the monthly examination required of a CTO after the supervising psychiatrist completes a Form 5D – Request made by a supervising psychiatrist for a practitioner to conduct the monthly examination of a patient
  - h) **CTO** : by the supervising psychiatrist making an inpatient treatment order for a patient on a Form 5A Community treatment order
  - i) **CTO**: by a supervising psychiatrist for the purpose of making an order revoking a community treatment order, as permitted by section 120(4)(a), 123(3)(a) or 131(5)(a);
  - j) **CTO**: by a supervising psychiatrist for the purpose of making a Form 5B - Continuation of community treatment order, as required by section 121(2);

- k) **Further Opinion**: by a psychiatrist for the purpose of giving a further opinion, as required by section 182(6) as applied by section 121(6) or as required by section 182(6).

### **What happens if I don't comply with this direction?**

A clinician may be fined up to \$20,000.

### **When does it start to apply?**

From 00:01 on the morning of 7 April 2020.

### **In short, what does this Direction practically mean?**

If a doctor or AMHP needs to assess or examine a patient to potentially refer them under the MHA 2014, and the patient meets certain risk factors for COVID-19, or has COVID-19, or the practitioner is directed to be isolated, the doctor or AMHP must only use the strategies specified in the Direction.

If a psychiatrist, doctor or AMHP needs to examine a patient for the purposes listed here, and the patient meets certain risk factors for COVID-19, or has COVID-19, or the practitioner is directed to be isolated, the psychiatrist, doctor or AMHP must only use the strategies specified in the Direction.

Practically, it makes audio visual assessments and examinations more available in the MHA 2014 in specific circumstances

**NOTE:** Audio visual mean seeing and hearing- assessments or examinations for Mental Health Act 2014 Forms **cannot** be done by telephone alone.

### **Questions?**

Call the Chief Psychiatrist's Clinicians' Helpdesk on 08 6553 0000 Monday to Friday, 8.30am – 4.30pm.

### **ALL DOCTORS AND ALL AMHPS in WESTERN AUSTRALIA MUST READ THIS DIRECTION**

**DR SOPHIE DAVISON** | Clinical Lead

COVID19 Clinical Services & Operational Response Program | Mental Health Workstream

**Department of Health**

Level G, D Block, [189 Royal Street, East Perth WA 6000](https://www.health.wa.gov.au/locations/189-Royal-Street-East-Perth-WA-6000)

6 April 2020

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## **PUBLIC HEALTH ACT 2016 (WA)**

### **Sections 157(1)(k) and 190(1)(p)**

## **MENTAL HEALTH INFECTION CONTROL DIRECTIONS**

The World Health Organization declared COVID-19 a pandemic on 11 March 2020.

On 23 March 2020, the Minister for Health declared a public health state of emergency with effect from 1:30pm on 23 March 2020 in respect of COVID-19 pursuant to section 167 of the *Public Health Act 2016* (WA) (**Act**). The public health state of emergency applies to the State of Western Australia.

I, Dr Robyn Lawrence, an emergency officer authorised by the Chief Health Officer under section 174(2) of the Act to exercise any of the emergency powers while the public health state of emergency declaration in respect of COVID-19 is in force, consider it reasonably necessary to give the following directions to all persons in Western Australia to prevent, control or abate the serious public health risk presented by COVID-19 pursuant to sections 157(1)(k) and 190(1)(p) of the Act.

### **DIRECTIONS**

#### **Preamble**

1. The purpose of these directions is to require medical practitioners (including psychiatrists) and authorised mental health practitioners to use infection control measures when conducting mental health assessments and examinations under the *Mental Health Act 2014* (the MHA) where the patient has, or is suspected of having, COVID-19 in order to prevent, control or abate the serious public health risk presented by COVID-19 by limiting the spread of COVID-19.

#### **Citation**

2. These directions may be referred to as the **Mental Health Infection Control Directions**.

#### **Commencement**

3. These directions come into effect at the beginning of the day after the day on which they are made.

## Directions

4. A practitioner who is responsible for conducting an assessment of a patient pursuant to section 48 of the MHA must conduct the assessment as specified in clauses 6 and 7 if:
  - (a) the patient has COVID-19;
  - (b) during the 14 days preceding the assessment, the patient arrived in Western Australia from a place outside Western Australia;
  - (c) during the 14 days immediately preceding the assessment, the patient had known contact with a person who has a confirmed case of COVID-19;
  - (d) during the 14 days immediately preceding the assessment, the patient disembarked from a cruise ship;
  - (e) the patient has a temperature equal to or higher than 38 degrees or symptoms of acute respiratory infection; or
  - (f) the practitioner has been directed to self-isolate for any reason.
5. A practitioner who is responsible for conducting an examination of a patient pursuant to section 79 of the MHA must conduct the examination as specified in clause 6 and 7 if:
  - (a) the patient has COVID-19;
  - (b) during the 14 days preceding the assessment, the patient arrived in Western Australia from a place outside Western Australia;
  - (c) during the 14 days immediately preceding the assessment, the patient had known contact with a person who has a confirmed case of COVID-19;
  - (d) during the 14 days immediately preceding the assessment, the patient disembarked from a cruise ship;
  - (e) the patient has a temperature equal to or higher than 38 degrees or symptoms of acute respiratory infection; or
  - (f) the practitioner has been directed to self-isolate for any reason.
6. Subject to clause 7, to prevent, control and abate the risk of COVID-19, an assessment or examination may only be conducted using one or more of the following infection control measures:
  - (a) the practitioner wears appropriate and adequate personal protective equipment in accordance with the advice and recommendations for the use of personal protective equipment published on the Western Australian Department of Health COVID-19 (coronavirus) internet page as amended from time to time;


- (b) the practitioner takes all reasonable steps to avoid coming within 1.5 metres of the patient at any time;
  - (c) the practitioner ensures there is a physical barrier between themselves and the patient, such as a door, window or perspex screen, but must be able to see and hear the patient; or
  - (d) the practitioner uses audiovisual communication.
7. A practitioner who has been directed to self-isolate for any reason may only conduct the assessment or examination using audiovisual communication.
8. A practitioner must comply with these directions despite the provisions of the MHA.

**Definition of practitioner**

9. A **practitioner** means the health practitioner responsible for conducting:
- (a) the assessment pursuant to section 48 of the MHA; or
  - (b) the examination pursuant to section 79 of the MHA.

**PENALTIES**

It is an offence for a person to fail, without reasonable excuse, to comply with any of these directions, punishable by a fine of up to \$20,000 for individuals.

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**Dr Robyn Lawrence**  
Emergency Officer  
06 April 2020