

## Comparison of key provisions: *Mental Health and Wellbeing Act 2022* and the *Mental Health Act 2014* – an update on implementation activity

### OFFICIAL

Key provisions in Mental Health and Wellbeing Act 2022 (MHWA) that are new or different from the Mental Health Act 2014 (MHA)	Key provisions in Mental Health and Wellbeing Act 2022 (MHWA) that are similar or comparable to the Mental Health Act 2014 (MHA)	What is being done to support implementation of this change?	Where are we up to?
Chapter 1 – Preliminary – definitions, scope, objectives and principles			
<p><b>“Mental Health and Wellbeing Service Provider”</b> is defined (s3) more broadly to include a wider range of service providers than were regulated under the MHA [s3]</p> <p><b>New requirements for the provision of “appropriate supports” to assist a person to understand information, communicate and make decisions.</b> All reasonable efforts must be made to provide supports any time the Act requires communication with a consumer or their family members, carers and supporters. [ss6&amp;7]</p> <p><b>Strengthened and more comprehensive Mental Health and Wellbeing Principles with</b></p>	<p><b>Meaning of “mental illness”</b> is comparable to the MHA with some updates to language and clarification that a person experiencing or having experienced psychological distress is not a reason to consider that the person has mental illness. [s4]</p> <p><b>Meaning of “treatment”</b> is comparable to the MHA [s5]</p>	<ul style="list-style-type: none"> <li>• <b>Act Implementation Leads (AILs) in all designated mental health services.</b></li> <li>• <b>Training delivered face to face through AILs</b></li> <li>• <b>eLearning modules</b></li> <li>• <b>Open education drop in sessions to be run twice daily (recorded)</b></li> <li>• <b>Redeveloped forms to support changed</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>AILs in all designated mental health services since May.</b></li> <li>• <b>Training package to be delivered to AILs w/c 7 August.</b></li> <li>• <b>Open education drop in sessions to be run twice daily from week commencing 14 August</b></li> <li>• <b>eLearning modules to be available to</b></li> </ul>

<p><b>higher threshold for consideration.</b> Mental Health and Wellbeing Providers must give proper consideration to the principles when making decisions and must make all reasonable efforts to comply with the principles when exercising a function under the Act. [ss 15-29]</p> <p><b>New provision that information must not be disclosed if there is a risk that a person may be subject to family violence or other serious harm [s31]</b></p>		<p><b>requirements when making decisions</b></p> <ul style="list-style-type: none"> <li>• Act handbook</li> <li>• Act helpdesk</li> <li>• Fact sheets</li> <li>• FAQs</li> </ul>	<p><b>services from 22 August.</b></p> <ul style="list-style-type: none"> <li>• All forms with the services from 7 August.</li> <li>• Act handbook published on DH website on 15 August.</li> <li>• Act helpdesk goes live on 15 August.</li> <li>• Factsheets delivered to services through AILs.</li> <li>• FAQs on the DH website since 1 August.</li> </ul>
<p><b>Chapter 2 – Protection of rights</b></p>			
<p><b>Advance statements of preference</b> (formerly called advance statement) may include a broader range of preferences relating to treatment, care and support needs. Witnessing requirements have been eased [Part 2.5]</p> <p><b>Nominated support person</b> (formerly called nominated person) role is clarified as focussed on advocating for the views and preferences of the patient and supporting them to communicate and make their own decisions.</p>	<p><b>Requirements to provide Statements of Rights</b> are similar but with strengthened obligations to take all reasonable steps to ensure rights are understood and additional requirement to provide Statement of Rights to persons admitted to bed-based designated mental health services. [Part 2.2]</p> <p><b>Provisions related to the right to communicate</b> are comparable to those of the MHA [Part 2.4]</p>	<ul style="list-style-type: none"> <li>• IMHA appointed to be appointed to provide opt out legal advocacy services</li> <li>• Opt-out non-legal advocacy protocols being developed</li> <li>• Developing the new Statements of Rights through VLA</li> </ul>	<ul style="list-style-type: none"> <li>• Opt-out non-legal advocacy protocols to services via AILs on 17 August, published online on 25 August.</li> <li>• Statements of Rights to be provided to services on 6 August (English language) and to be published on DH website by 16 August</li> </ul>

<p>Witnessing requirements have been eased [Part 2.6]</p> <p><b>Increased obligation on designated mental health services</b> to determine if a statement or nomination is in place, to make all reasonable efforts to give effect to an advance statement of preferences and/or to support a nominated support person. [ss32-34]</p> <p><b>A new opt out model of non-legal mental health advocacy</b> is established. [Part 2.3]</p>	<p><b>Provisions related to second psychiatric opinions</b> are comparable to those of the MHA [Part 2.7], however, with a new requirement that a patient is automatically provided with written reasons when recommendations of a second psychiatric opinion are not adopted [s 74]</p>		<p><b>(English and other languages).</b></p>
<p><b>Chapter 3 – Treatment and interventions</b></p>			
<p>New <b>Decision making principles for treatment and interventions</b> that a person must give proper consideration to if making a decision or exercising a power under this Chapter or Chapter 4 (this includes in relation to treatment decisions, use of restrictive interventions and the use of compulsory assessment and treatment) [Part 3.1]</p> <p><b>New requirement for written reasons to be provided whenever a treatment preference outlined in an advance statement of preferences is overridden</b> [s90]</p> <p><b>Introduction of regulation of chemical restraint as a type of restrictive intervention.</b> Chemical restraint is defined as <i>the giving of a drug to a person for the primary purpose of controlling the person’s behaviour by restricting their freedom of movement but</i></p>	<p><b>Provisions related to the presumption of capacity and informed consent</b> are comparable to those of the MHA [Part 3.2]</p> <p><b>Provisions related to treatment, medical treatment and neurosurgery</b> are comparable to those of the MHA [Parts 3.3, 3.4 and 3.6]</p> <p><b>Provisions related to Electroconvulsive treatment (ECT)</b> are comparable to those of the MHA, although with some drafting changes to clarify the provisions [Part 3.5]</p> <p><b>Provisions related to the use of restrictive interventions</b> are comparable [Part 3.7], however with the addition of:</p> <ul style="list-style-type: none"> <li>obligation on providers to aim to reduce the use of restrictive interventions with the eventual aim of eliminating their use [s125]</li> </ul>	<ul style="list-style-type: none"> <li><b>Act Implementation Leads (AILs) in all designated mental health services.</b></li> <li><b>Training delivered face to face through AILs</b></li> <li><b>Open education drop in sessions to be run twice daily (recorded)</b></li> <li><b>eLearning modules</b></li> <li><b>Redeveloped forms to support changed requirements when making decisions</b></li> </ul>	<ul style="list-style-type: none"> <li><b>AILs in all designated mental health services since May.</b></li> <li><b>Training package to be delivered to AILs w/c 7 August.</b></li> <li><b>Open education drop in sessions to be run twice daily from week commencing 14 August</b></li> <li><b>eLearning modules to be available to services from 22 August.</b></li> </ul>

<p><i>does not include the giving of a drug to a person for the purpose of treatment or medical treatment. [Part 3.7]</i></p>	<ul style="list-style-type: none"> <li>• requirements to document alternatives tried or considered [s133]</li> <li>• to review the use of restrictive interventions and to offer an opportunity for the person subject to these interventions an opportunity to participate in the review [s138].</li> <li>• (See also opposite in relation to new regulation of chemical restraint as a type of restrictive intervention and introduction of new decision making principles)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>OCP Guidelines and Reporting Directives</b></li> <li>• <b>Act handbook</b></li> <li>• <b>Act helpdesk</b></li> <li>• <b>Fact sheets</b></li> <li>• <b>FAQs</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>All forms with the services from 7 August.</b></li> <li>• <b>Act handbook published on DH website on 15 August.</b></li> <li>• <b>Act helpdesk goes live on 15 August.</b></li> <li>• <b>Chief Psychiatrist updated Sexual Safety guideline and reporting directive for are available on DH website.</b></li> <li>• <b>Chief Psychiatrist updated ECT guideline, reporting directive and form for reporting serious adverse events will be available on DH website from 14 August.</b></li> <li>• <b>Chief Psychiatrist updated Reportable Deaths reporting directive will be available on DH website from 14 August.</b></li> <li>• <b>Chief Psychiatrist Chemical Restraint reporting directive will be available on DH</b></li> </ul>
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			<p>website from 21 August.</p> <ul style="list-style-type: none"> <li>• Chief Psychiatrist updated Restrictive Intervention guideline (including chemical restraint) will be available as soon as practicable.</li> </ul>
<b>Chapter 4 – Compulsory assessment and treatment</b>			
<p><b>Maximum duration of a community treatment order reduced</b> from 12 months to 6 months [s193]</p>	<p><b>Compulsory assessment criteria and compulsory treatment criteria are unchanged</b> from the MHA [ss142 &amp; 143]</p> <p><b>Provisions for the making, variation and revocation and operation of assessment orders, court assessment orders, temporary treatment orders and treatment orders</b> are comparable to those of the MHA, however, the decision-making principles for treatment and interventions must be given proper consideration in the application for and making of these orders [Parts 4.2, 4.3, 4.4, 4.5 and 4.6]</p> <p>The commencement of the new Act will not impact existing temporary treatment orders or treatment orders. These orders will continue to operate for the period of time specified on the order.</p>	<ul style="list-style-type: none"> <li>• Act Implementation Leads (AILs) in all designated mental health services.</li> <li>• Training delivered face to face through AILs</li> <li>• Open education drop in sessions to be run twice daily (recorded)</li> <li>• eLearning modules</li> <li>• Redeveloped forms to support changed requirements when making decisions</li> <li>• Act handbook</li> <li>• Act helpdesk</li> <li>• Fact sheets</li> <li>• FAQs</li> </ul>	<ul style="list-style-type: none"> <li>• AILs in all designated mental health services since May.</li> <li>• Training package to be delivered to AILs w/c 7 August.</li> <li>• Open education drop in sessions to be run twice daily from week commencing 14 August</li> <li>• eLearning modules to be available to services from 22 August.</li> <li>• All forms with the services from 7 August.</li> </ul>

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<b>Chapter 9 – Mental Health and Wellbeing Commission</b>			
<p><b>The Mental Health and Wellbeing Commission is established</b> as an independent body with multiple Commissioners including those in designated lived experience roles.</p> <p><b>The jurisdiction of the Mental Health and Wellbeing Commission extends to all mental health and wellbeing service providers.</b> [Chapter 9]</p> <p><b>Commission to play a key role in system wide oversight of quality and safety</b> and monitoring achievement of Royal Commission’s key goals</p> <p><b>An “own motion” investigation power</b> is introduced for the Commission.</p>	<p><b>The complaints handling role</b> of the Mental Health Complaints Commissioner under the MHA will be taken over by the new Commission with some changes to:</p> <ul style="list-style-type: none"> <li>• allow complaints from families, carers and supporters in relation to their experiences in those roles</li> <li>• more closely align processes and powers with those available to the Health Complaints Commissioners under the <i>Health Complaints Act 2016</i></li> <li>• explicitly allow for complaints about a failure to comply with obligations in relation to principles</li> </ul>	<p><b>Establishing the MHW Commission.</b></p>	<ul style="list-style-type: none"> <li>• <b>MHWC will come into existence on 1 September 2023.</b></li> <li>• <b>Chair and Commissioners were appointed and announced in March 2023.</b></li> <li>• <b>CEO of the Commission to be announced shortly.</b></li> </ul>

Chapter 17 – General			
<p><b>New provisions in relation to information sharing</b> are introduced, including to:</p> <ul style="list-style-type: none"> <li>introduce new principles to clarify the purpose and expectations in relation to information sharing</li> <li>reflect the new service system by allowing information sharing with specified emergency service providers in an emergency</li> <li>specify who can access information from the current electronic health information system and the scope of such access</li> <li>enable a consumer to contribute a statement on their health information where a request to correct information has been made under the <i>Freedom of Information Act 1982</i> or the relevant Health Privacy Principle and the provider has refused to make the correction</li> <li>to oblige mental health and wellbeing service providers to share information with family, carers or supporters at defined points of care (such as admission or discharge) when a consumer has consented to this disclosure.</li> </ul> <p><b>A requirement for a review of the Act</b> to be undertaken after the first 5 years of operation.</p>	<p><b>In other respects, provisions regarding the collection, use and disclosure of information</b> are comparable to those of the MHA</p> <p><b>Provisions regarding the powers for the Chief Psychiatrist to issue Codes of Practice</b> are comparable to those of the MHA</p> <p><b>Provisions regarding the mental health and wellbeing surcharge</b> are remade</p>	<ul style="list-style-type: none"> <li><b>Act Implementation Leads (AILs) in all designated mental health services.</b></li> <li><b>Training delivered face to face through AILs</b></li> <li><b>Open education drop in sessions to be run twice daily (recorded)</b></li> <li><b>eLearning modules</b></li> <li><b>Redeveloped forms to support changed requirements when making decisions</b></li> <li><b>Act handbook</b></li> <li><b>Act helpdesk</b></li> <li><b>Fact sheets</b></li> <li><b>FAQs</b></li> </ul>	<ul style="list-style-type: none"> <li><b>AILs in all designated mental health services since May.</b></li> <li><b>Training package to be delivered to AILs w/c 7 August.</b></li> <li><b>Open education drop in sessions to be run twice daily from week commencing 14 August</b></li> <li><b>eLearning modules to be available to services from 22 August.</b></li> <li><b>All forms with the services from 7 August.</b></li> <li><b>Act handbook published on DH website on 15 August.</b></li> <li><b>Act helpdesk goes live on 15 August.</b></li> <li><b>Factsheets delivered to services through AILs.</b></li> </ul>

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