

Proposal that the Queensland Mental Health Act be reviewed

Discussion paper

March 2026

It is now ten years since the *Mental Health Act* was enacted. That alone may constitute a sufficient reason for its review, given the important impact it has on the rights of at-risk Queenslanders. But there are a number of additional cogent reasons to support a wide-ranging review taking place. In this discussion paper I briefly canvas the most compelling of these.

Introduction

In this discussion paper I outline and explore the reasons why the time is right for a review to be conducted into the ongoing operation and effectiveness of the *Mental Health Act 2016*.

The background to my interest in this topic stems from a number of my office's recent mental health reform-related analyses and engagements.

In 2022 my office published a discussion paper entitled 'Better Pathways: Improving Queensland's delivery of acute mental health services'.¹ This discussion paper contained 21 reform recommendations concerning the provision of acute care in community and emergency settings, as well as within inpatient Authorised Mental Health Services. These recommendations also addressed the operation of the Mental Health Review Tribunal, system safeguards, discharge planning and data collection. While I am pleased that there have been a number of reforms in the wake of this discussion paper,² its focus was not specifically on the *Mental Health Act* itself.

Similarly, in 2022, shortly before the completion of my office's discussion paper, the final report from the Queensland parliament's Mental Health Select Committee 'Inquiry into the opportunities to improve mental health outcomes for Queenslanders' was tabled, which contained 57 reform recommendations.³ This has led to some significant sector-wide reforms and investments.

This report also, however, was not specifically, or even principally, focussed on the *Mental Health Act* and none of the recommendations was addressed towards reforming the Act.

My office is currently completing a large project on Adults with Cognitive Disability in the Queensland Criminal Justice System, which has so far seen the release of five discussion papers, one of which is entitled 'The forensic system (mental health and disability)'.⁴

¹ Queensland Public Advocate, 'Better Pathways: Improving Queensland's delivery of acute mental health services', 2022 discussion paper, available via <https://www.publicadvocate.qld.gov.au/our-advocacy/mental-health>.

² See Queensland Public Advocate, Annual Report 2024-2025, available via <https://www.publicadvocate.qld.gov.au/publications/corporate-publications/annual-reports>, pp. 34-35.

³ Mental Health Select Committee, 'Inquiry into the opportunities to improve mental health outcomes for Queenslanders', 2022, available at <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5722t743/5722t743-64f1.pdf>.

⁴ See Queensland Public Advocate, discussion papers concerning Adults with Cognitive Disability in the Queensland Criminal Justice System, available at <https://www.publicadvocate.qld.gov.au/our-advocacy/justice-and-human-rights/adults-with-cognitive-disability-in-the-criminal-justice-system>.

This will lead to reform recommendations to government later this year on criminal justice topics that will extend to provisions in the *Mental Health Act*. I won't pre-empt here the recommendations that this report will ultimately contain; suffice it to say that some of them will likely address *Mental Health Act* provisions concerning the operation of the Mental Health Court and the making of forensic orders (when a person is found unfit to stand trial or not guilty by reason of being of 'unsound mind').

Relatedly, in 2023 the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability made a suite of criminal justice reform recommendations to the Commonwealth, State and Territory governments.⁵ Some of these recommendations, so far as Queensland is concerned, relate to provisions in the *Mental Health Act*.

Meanwhile, the ongoing operation of the National Disability Insurance Scheme, and foreshadowed reforms to it, will at least indirectly affect the use to which provisions of the *Mental Health Act* are put. At the end of 2025 there were 12,691 Queenslanders with psychosocial disability being supported by the scheme,⁶ which is only a fraction of Queenslanders with mental illness. One key reform, in the wake of the 2023 Independent Review into the National Disability Insurance Scheme,⁷ will see the development of new psychosocial foundational supports, which are planned to enable more people with psychosocial disability to be supported outside of direct NDIS scheme participation.

Finally, by way of background, in 2025 I facilitated two 'Urgent Mental Health Care' roundtable discussions at Common Ground in Brisbane that involved, at one or both of these, a range of agencies with mental health expertise, including the Chief Psychiatrist, the Mental Health Commissioner, the Mental Health Review Tribunal, the Health Ombudsman, and the Queensland Human Rights Commissioner. The Mental Health Lived Experience Peak Queensland played a key role at these roundtable discussions, encouraging those assembled to draw from the experiences of people who have been subject to compulsory treatment in identifying reform imperatives.

As the notes from the second roundtable summarised:

'There was support expressed at the roundtable for four general reform-oriented actions to improve our provision of urgent mental health care:

1. a review to be conducted of the *Mental Health Act 2016*;
2. greater availability of alternatives to Emergency Department admissions (e.g. more Crisis Stabilisation Units);
3. an increased variety of discharge options for people in hospital (including in acute settings) who are medically fit for discharge; and
4. greater engagement with people with lived experience in developing and implementing reforms to the provision of urgent mental health care.'⁸

Those roundtable discussions, and subsequent discussions and correspondence I have had with representatives of several agencies – including Queensland Advocacy for Inclusion, Legal Aid Queensland, the Mental Health Commission, and the Mental Health Lived Experience Peak Queensland – have informed this paper (and I thank those representatives for the discussions we have had and the ideas that have been generated).

The following sections of this discussion paper outline some of the key areas that might be examined by a review of the *Mental Health Act*.

⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, final report, 2023, recommendations 8.1 to 8.24, available via <https://disability.royalcommission.gov.au/publications/final-report>.

⁶ The 'Psychosocial data to 31 December 2025' is available via the NDIS participant dashboard entry at the topic 'Psychosocial', which is available via <https://dataresearch.ndis.gov.au/reports-and-analyses/participant-dashboards/psychosocial>.

⁷ Independent Review into the National Disability Insurance Scheme, *Working together to deliver the NDIS*, Final Report, 2023.

⁸ The Urgent Mental Health Care roundtable discussions were held on 16 July and 20 November 2025. Notes from both roundtables are available via <https://www.publicadvocate.qld.gov.au/our-advocacy/mental-health/urgent-mental-health-care-in-queensland-roundtables>.

Broadening the Act's scope

The Act at present has a broad title – the *Mental Health Act* – that one could assume means that it has a correspondingly broad focus. One might think it generally, for instance, regulates the delivery of all mental health services in this state.

But as its constituent parts reveal, aside from some general introductory provisions, the Act is concentrated on the provision of compulsory mental health treatment, the regulation of restrictive practices, the provision of mental health services to people in custody, and the operation of Authorised Mental Health Services, the Chief Psychiatrist, the Mental Health Review Tribunal, and the Mental Health Court.

By way of contrast, Victoria's mental health legislation, which was enacted following the Royal Commission into Victoria's Mental Health System,⁹ is entitled *Mental Health and Wellbeing Act*, and aspires to a broader focus on well-being, the protection of rights and the provision of a greater array of alternatives to compulsory treatment than existed in earlier mental health legislation in Victoria.¹⁰

South Australia, meanwhile, has developed a draft Mental Health and Wellbeing Bill 2025, which has similar aspirations.¹¹

The opportunity is there for revised mental health legislation in Queensland to outline principles and objectives about the operation of the broader mental health system in Queensland, including the provision of community-based care.

Provisions on compulsory treatment

One key element of the *Mental Health Act* is its provisions regulating compulsory treatment, particularly the criteria for the making and reviewing of Treatment Authorities, which are by far the most frequent compulsory treatment mechanism. The criteria for the making of a Treatment Authority are that the person in question: 'has a mental illness', 'does not have capacity to consent to be treated', and that without treatment the likely result will be that 'imminent serious harm' will occur to the person themselves or others, or that the person will experience a 'serious mental or physical deterioration'.¹² The Act outlines the process and timeframes for the making of Treatment Authorities, along with the preliminary examination and assessment stages, and sets out the review role of the Mental Health Review Tribunal.¹³

The enactment of the *Mental Health Act* in 2016 was accompanied by a hope, and even an expectation, that the promotion of alternatives to compulsory mental health treatment would result in a fall in compulsory treatment rates.

As Kimbali Wild and colleagues (including Professor Neeraj Gill) wrote in a 2025 article:

'The Mental Health Act, 2016 (Qld) was implemented in March 2017 to align with the [Convention on the Rights of Persons with Disabilities] by emphasizing the importance of considering "least restrictive treatment" and outlining safeguards that promote alternatives to involuntary treatment, signifying a move towards protection of human rights ... The Mental Health Act, 2016 (Qld) introduced several less restrictive measures to ensure treatment, including Advance Health Directive, Nomination support person and statutory health attorney etc. Despite this new legislation which aims to enhance patient autonomy and offer less restrictive alternatives, the rates of involuntary psychiatric treatment are not only high but also rising in Queensland ...'¹⁴

⁹ The final report from the Royal Commission into Victoria's Mental Health System was delivered in 2021 and is available via <https://rcvmhs.archive.royalcommission.vic.gov.au/>.

¹⁰ *Mental Health and Wellbeing Act 2022* (Vic).

¹¹ South Australia's Mental Health and Wellbeing Bill 2025 was previously accessible via: <https://yoursay.sa.gov.au/mental-health-and-wellbeing-bill>.

¹² *Mental Health Act 2016* (Qld), s. 12.

¹³ *Mental Health Act 2016* (Qld), Chapters 2 and 12.

¹⁴ Kimbali Wild et al, 'Reasons behind the rise in involuntary psychiatric treatment under mental health act 2016, Queensland, Australia – Clinician perspectives', *International Journal of Law and Psychiatry*, vol. 98, 2025, available via <https://www.sciencedirect.com/science/article/pii/S0160252724001109>, p. 2.

In his most recent annual report, the Chief Psychiatrist has identified that on 30 June 2025 there were 7,232 people subject to Treatment Authorities in Queensland, which compares with 6,878 at the same date the previous year.

The full list of compulsory orders under the auspices of Authorised Mental Health Services saw the following in place at 30 June 2025, as compared with the figure for 30 June 2024:

Point-in-time numbers of 'patients subject to involuntary assessment, treatment, care or detention'¹⁵

	30 June 2025	30 June 2024
Involuntary Assessment	18	16
Treatment Authorities	7,232	6,878
Treatment Support Order	283	256
Forensic Order	758	729
Classified patients	41	55
Total patients	8,287	7,870

Note: The 'Total patients' figure is not simply a sum of the earlier categories; a person may be subject to more than one order.

At the roundtable discussion in November 2025 that was mentioned earlier, I discussed an article written that month – under the heading 'Our mental health system is in a "permacrisis"' – in which Professor John Mendoza observed that 'Queensland has the highest rates of involuntary treatment among the Australian states – be that in hospitals, rehabilitation units or in the community – and this has steadily increased since 2016'. He also wrote that 'Internationally, Australia has the second highest rate of involuntary treatment (among 22 developed nations)', and he called for 'an urgent independent review of Queensland's Mental Health Act'.¹⁶

As the roundtable notes discuss, 'there is some debate about the inter-jurisdictional comparability of rates of involuntary treatment. For instance, the orders when counted at a national level may not include orders of a shorter duration in some jurisdictions'.¹⁷

There is debate, then, about Queensland's rate of involuntary mental health treatment, and how this compares with the rates in other states and territories, and indeed internationally. There is also debate about the extent to which the Act's provisions affect that rate. These are questions that a review of the *Mental Health Act* could address.

I hasten to add that there are several variables that, of course, affect rates of involuntary treatment. These variables include the compulsory treatment criteria contained in the governing legislation, but they also extend to a number of other factors. Such factors include: the availability of emergency support for people not currently on treatment orders; the availability of non-crisis mental health and other support; and the existence or absence of other supportive elements in a person's life that can help them to ameliorate the effect of any mental illness. This extends, unsurprisingly, to a person having the basic necessities of life, such as affordable housing.

As suggested, a review of the *Mental Health Act* could examine the use that is made of its compulsory provisions, and indeed could examine Queensland's rate of involuntary treatment in national and even international perspective. The reviewer could be tasked with identifying achievable ways to drive down the use of involuntary treatment. And, at the very least, the reviewer could be asked to identify how revised legislation might more strongly require involuntary treatment to be a mechanism of last resort, after

¹⁵ Office of the Chief Psychiatrist, *Annual Report 2024-2025*, available at https://www.health.qld.gov.au/_data/assets/pdf_file/0031/1466086/chief-psychiatrist-annual-report-2024-25.pdf, p. 22; *Annual Report 2023-2024*, available at https://www.health.qld.gov.au/_data/assets/pdf_file/0032/1364954/Chief-Psychiatrist-Annual-Report-2023-2024.PDF, p. 28.

¹⁶ John Mendoza, 'Our mental health system is in a "permacrisis"', *Gold Coast Bulletin*, 15 November 2025.

¹⁷ 'Notes from a second roundtable discussion on urgent mental health care in Queensland', 20 November 2025, p. 2.

all other viable alternatives have been meaningfully considered. Such revisions might even extend to the inclusion of stronger obligations concerning the availability of an array of 'front end' alternatives that can help ensure that a situation does not reach crisis point.

Alignment with human rights

The *Mental Health Act* predates the enactment of the *Human Rights Act 2019* (Qld). It would be timely now to consider the *Mental Health Act's* compatibility with human rights in light of developments since 2016, which include not only the passage of the *Human Rights Act* but ongoing reform imperatives that accompany the developing interpretation and operationalisation of other key human rights instruments, such as the *United Nations Convention on the Rights of Persons with Disabilities*.

One possibility would be the inclusion of a broader – and more enforceable – statement of rights than the current version of this.¹⁸ A broader statement of rights might apply to mental health consumers generally, in addition to its application to people who are subject to involuntary treatment.

In seeking greater alignment with human rights obligations, renewed mental health legislation could identify a broader range of alternatives to compulsory treatment, and the review could consider the reasons for the suspected low uptake of Advance Health Directives that contain mental health instructions, which can in part possibly be attributed to their relatively limited legal effect (under both the *Mental Health Act* and the *Powers of Attorney Act*).¹⁹

The review could also examine the provisions concerning restrictive practices – which include the use of seclusion, mechanical and physical restraint.²⁰

One troubling area of practice that has been raised with me a number of times in the past year concerns the use by security staff in compulsory settings of mechanisms – such as handcuffs – that have reportedly not been considered to amount to restrictive practices under the current legislative provisions. Revised legislation could provide clarity on this point.

Renewed legislation could also generally promote clearer restrictive practices reduction and elimination obligations.²¹

One development of interest on the topic of alignment between human rights and compulsory mental health treatment is the inclusion in South Australia's draft *Mental Health and Wellbeing Bill* of provisions that would, if the Bill were enacted, establish a Human Rights Coercion and Reduction Committee.

This committee would, among other responsibilities, have the roles of:

- promoting 'a human rights based approach to ensure that all new mental health care initiatives ... are grounded in the principles of human rights, dignity and respect';
- providing 'guidance on reducing the use of restrictive practices'; and
- contributing 'to the development and review of mental health policies to ensure alignment with human rights standards'.²²

Other potential reforms that have been raised with me that a review of the *Mental Health Act* might address include the following:

- a broader commissioning and system governance role for the Mental Health Commission;
- greater regional specificity and decision-making in the provision of mental health services;

¹⁸ *Mental Health Act 2016* (Qld), ss 277, 278.

¹⁹ *Mental Health Act 2016* (Qld), ss 53, 54, 222; *Powers of Attorney Act 1998* (Qld), s. 38.

²⁰ *Mental Health Act 2016* (Qld), Chapter 8.

²¹ See, for instance, *Mental Health and Wellbeing Act 2022* (Vic), s. 125, which requires services at least to 'aim to ... reduce' and 'eventually eliminate the use of restrictive interventions'.

²² *Mental Health and Wellbeing Bill 2025* (SA), cls 152, 155.

- action on addressing the profound over-representation of First Nations people among those who are subject to compulsory treatment;
- consideration being given to the removal of provisions enabling the making of Treatment Support Orders;²³
- insertion of a legislated entitlement for people in certain circumstances to advocacy support;
- the improved monitoring of detention settings;
- improved and more accessible complaints processes;
- an elevated role for people with lived and living experience in the operation of the Act and the mental health system more broadly; and
- provision of greater clarity in a range of areas, including:
 - those decisions under the legislation which are able to be appealed, and
 - when Mental Health Review Tribunal hearing transcripts must be provided.

Possible terms of reference for a review of the *Mental Health Act*

The selection of the reviewing body will obviously be an important aspect of the proposed review of the *Mental Health Act*. The possibility exists for a reviewing panel to be charged with this responsibility, which might involve expertise in the fields of psychiatry and law, and ideally also would involve lived experience representation.

The terms of reference accompanying a review of the *Mental Health Act* could incorporate an instruction to the reviewing body to inquire into, and report on, the following:

- How future mental health legislation might enshrine key principles and approaches to be adopted in the provision of all mental health services throughout Queensland;
- The operation of compulsory mental health treatment practices in Queensland, with a focus on:
 - determining Queensland's comparative rate of involuntary mental health treatment, in both inpatient and community settings,
 - assessing the adequacy of the Act's compulsory treatment provisions, and
 - identifying mechanisms by which the compulsory treatment rate could be reduced, including by the adoption of revised compulsory treatment criteria;
- The effectiveness of provisions governing the use of – and monitoring of – restrictive practices in compulsory mental health settings, and best practice proposals for reducing and eliminating restrictive practice usage, including through the adoption of tighter legislative criteria;
- The forensic (criminal justice) elements of the *Mental Health Act* and the extent to which these need to be modernised in the wake of recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and other relevant reviews;
- The adequacy of existing review and oversight mechanisms and provisions, including those concerning the inspection of compulsory settings and reviews of involuntary treatment orders; and
- The potential for people with lived and living experience of mental ill health to play a greater role in the operationalisation of, and monitoring mechanisms contained in, future mental health legislation.

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 3 March 2026

²³ *Mental Health Act 2016 (Qld)*, s. 143.