GOVERNMENT OF
WESTERN AUSTRALIA

Government Response to the Report on the Statutory Review of the Mental Health Act 2014

Background

The Cook Government appreciates the significance of the *Mental Health Act 2014* (the Act) and the importance of ensuring an appropriate legal framework for: the treatment, care, support and protection of people who have a mental illness; the protection of the rights of people who have a mental illness; and the recognition of the role of families and carers in providing the best possible care and support to people who have a mental illness, in the least restrictive environment.

Under section 587 of the Act, the Minister for Mental Health (the Minister) is required to undertake a review (the Review) of the operation and effectiveness of the Act as soon as is practicable five years after its commencement (the Act came into operation on 30 November 2015). In addition, the Minister is required to prepare a report about the outcomes of the Review and table that report in both houses of Parliament.

As the agency principally responsible for assisting the Minister in administering the Act, the Mental Health Commission (Commission) was tasked with conducting the Review.

The commencement of its work was delayed due to the pandemic, and the Review formally commenced in early 2021 and concluded in 2023 with the tabling of the *Report on the Statutory Review of the Mental Health Act 2014* (Report) in Parliament. A Steering Group was appointed in 2021 by the former Minister for Mental Health to oversee and guide the Review process and contribute to the recommendations.

The Terms of Reference and Guiding Principles for the Review developed in 2021 remain relevant today. The proposed recommendations follow two years of extensive consultation and research and have been considered alongside current government priorities and the legislative environment. As a result, the Cook Government has prioritised 52 legislative amendments aligned to the Review's Terms of Reference and Guiding Principles that enhance the operation of the Act.

The finalisation of the Review meets a key milestone in ensuring the ongoing operation and effectiveness of contemporary mental health legislation in Western Australia where human rights remain at its core.

The Cook Government extends is sincere appreciation to all the members of the Steering Group, overseen by Independent Chair Ms Deborah Colvin, Western Australia's inaugural Mental Health Advocate, for dedicating their time and expertise to the guiding the Review process and providing advice to the Minister in the development of recommendations for legislative amendment.

Most importantly, the Cook Government recognises the significant and invaluable contribution of all those engaged through the consultation processes including mental health professionals, consumers, carers and family members and the broader Western Australian community. In listening to and respecting the expertise of people with lived experience we are able to ensure continued improvement of our mental health legislation, programs and services.

Consultation processes

The Review process was necessarily comprehensive. Assisted by the Steering Group, the consultation sought to engage with a diverse range of stakeholders, many with differing perspectives. All feedback has been given due consideration in the development of recommendations in the Report.

The Steering Group also considered the previous work undertaken as part of the Post Implementation Review completed in 2018 and other issues raised by stakeholders since the Act was implemented. Formal consultation processes included literature and desktops reviews, public submissions, community engagement sessions supported through a community grants process, complex issues workshops and targeted consultations.

The Steering Group submitted its findings to the Minister in December 2023, and with the assistance from the Mental Health Commission, the Hon Amber-Jade Sanderson, MLA Minister for Health; Mental Health has prepared a Report on the Review's outcomes.

Legislative amendments

Based on the breadth of consultation undertaken, the findings of the Review were extensive. The Cook Government has prioritised key legislative amendments based on the Review's Guiding Principles. These Principles are as follows:

1. Legislation should be developed or amended only when there is no other appropriate way of responding to an issue after taking all relevant circumstances into account, for example using policies, procedures, guidelines and/or education;

2. Legislative changes should seek to advance the human rights of persons with mental illness, their families and carers;

3. Due consideration be given to submissions from all stakeholders recognising their efforts, areas of expertise and lived experience;

4. Recommendations for significant legislative change should be evidence-based, with due consideration given to possible flow-on effects including unintended consequences;

5. Regard should be given to the principles of substantive equality in recognition of the differing impact legislation may have on certain groups in the community (Note: The Steering Group recognised that in addition to substantive equality, the importance of equity would be considered as a guiding principle throughout the Review process);

6. Overly prescriptive provisions which set out processes or requirements in detail can be counterproductive and should generally be avoided and addressed through policy and practice guidance where possible; and

7. Legislative changes should not seek to direct the specifics of clinical practice, nor create an interface which may lessen therapeutic engagement, nor create an excessive administrative burden which may significantly reduce the practical time in direct face-to-face clinical care.

Three areas of reform

The Cook Government proposes three key areas of reform: further enhancing consumer rights; enhancing access to culturally appropriate care for Aboriginal or Torres Strait Islander people; and refining processes to improve patient and staff experiences.

1. Further enhancing consumer rights

Amendments to the Objects and the Mental Health Charter will emphasise considerations of trauma, diversity, individual attributes and beliefs such as gender identity, race, religion, faith, spirituality, ability and capability, as well as peoples' experiences or life circumstances (e.g. experience of family or domestic violence) when providing care and treatment to people under the Act.

Improvements in communication with nominated support persons, families and advocates will also be pursued to improve patient care and treatment. This includes enhancing patient access to services and improving notification requirements to the Mental Health Advocacy Service, in certain circumstances. Changes to increase the Chief Psychiatrist's access to patient information are also included in the proposed amendments.

Further increasing access to information and notifications to the Mental Health Tribunal, amendments that streamline some administrative processes within the Mental Health Tribunal such as correcting errors will also be addressed.

2. Enhancing access to culturally appropriate care for Aboriginal or Torres Strait Islander people

The Act will be amended to place a greater onus on service providers to facilitate consultation and collaboration with Aboriginal people. This includes improving access to culturally appropriate care for Aboriginal people as provided under the Act.

3. Refining processes to improve patient and staff experiences

Amendments will be pursued to improve a patient's experience within the mental health system. Legislative amendments will refine processes around transport orders (physically transferring patients within the mental health system), notification requirements around some aspects of patient care and rules relating to seclusion, restraint, and reasonable force.

Government's response to recommendations

The Government's response to individual recommendations is provided in the following table.

No.	Recommendation	Government Response
1	Amend the Objects of the Act as follows: • At section 10(1)(a) to include the following: (a) to provide trauma-informed care which recognises and responds to the diverse needs of people; (b) to provide holistic treatment which addresses other needs, such as physical health needs; (c) to promote the recovery of people who have a mental illness and to support their full participation in community life; (d) to deliver and evaluate mental health care in a way that ensures people living with mental illness or psychological distress, and the people receiving treatment, their carers, families and supporters are the centre of changes in practices and service delivery; and (e) to ensure provision of culturally safe services and environments for Aboriginal or Torres Strait Islander people and others who are of culturally diverse backgrounds. • At section 10(1)(d) by replacing the phrase "to help minimise the effect of mental illness on family life" with the phrase "to maximise opportunities and capabilities for people with mental illness to enable consumers to live a life that is meaningful for them." • At section 10(2) of the Act to require a person or body performing a function under the Act to "make every effort to meet the Objects of the Act" replacing the words "have regard to."	Supported.
2	Amend the Mental Health Charter as follows: <u>Principle 3</u> Amend Principle 3 at: (3.1) To include a reference to "any experience of trauma" and provision of trauma informed care. Example of amended principle: "A mental health service must uphold a person-centred focus with a view to obtaining the best possible outcomes for people experiencing mental illness, including by recognising life experiences (including any experience of trauma), needs, preferences, aspirations, values and skills, while delivering goal-oriented treatment, care and support." (3.2) To include a diversity principle to ensure access to a diverse mix of care and support services. <u>Principle 5</u> Amend Principle 5 to include a reference to supported decision making as follows: "People receiving mental health and wellbeing services are to be supported to make decisions and to be involved in decisions about their assessment, treatment and recovery including when they are receiving compulsory treatment. The views and preferences of the person receiving mental health and wellbeing services are to be given priority."	Supported.

	Principle 6 Amend Principle 6 to include: “gender identity,” “religion or religious conviction,” “race,” (replacing the phrase “cultural and spiritual beliefs and practices,” and “diverse ability and capability”). It is recommended that the terminology align with the findings of the Law Reform Commission WA Project 111 Final Report – Review of the *Equal Opportunity Act 1984* (WA). Principle 7 Amend Principle 7 to strengthen the requirements for supported decision making for Aboriginal or Torres Strait Islander people, and remove the phrase “to the extent that it is practicable and appropriate to do so” as follows: “A mental health service should provide treatment and care to people of Aboriginal or Torres Strait Islander descent that is appropriate to, and consistent with, their right of self-determination, their cultural and spiritual beliefs and practices and having regard to the views of their families and the views of significant members of their communities, including Aboriginal community controlled organisations, Elders and traditional healers, and Aboriginal or Torres Strait Islander mental health workers.” Principle 8 Amend Principle 8 to include “family and domestic violence.” Principle 9 Amend Principle 9 to include a reference to providing culturally appropriate services. Example of amended principle: “A mental health service must recognise the range of circumstances, both positive and negative, that influence mental health and wellbeing, including relationships, [any experience of trauma], accommodation, recreation, education, financial circumstances and employment [and provide culturally appropriate services].” Principle 14 Amend Principle 14 to add “peer workers, advocates, or any other support person of the consumer’s choice.” New Principle Amend the Charter to insert a new gender safety principle (similar to that found in the *Mental Health and Wellbeing Act 2022* (Victoria)).	
3	Amend the Act to remove the phrase “to the extent that it is practicable and appropriate to do so” in sections 50, 81 and 189 and Principle 7 of the Charter, replacing it with a phrase that puts a greater onus on the service provider to facilitate consultation and collaboration with Aboriginal or Torres Strait Islander people, and include safeguards that protect the consumer’s autonomy.	Supported.
4	Amend the Act to require that the person in charge of a mental health service must contact the patient’s nominated person as soon as practicable upon the patient’s presentation at the service, if the patient has a nominated person, and provided that the patient has given their consent for their nominated person to be contacted.	Supported.
5	Amend the Act to remove the option of making a complaint to the Chief Psychiatrist by a person refused voluntary admission to an authorised hospital while retaining the ability for a complaint to be made to either the person in charge of the authorised hospital or the Health and Disability Services Complaints Office.	Supported.

6	In relation to further opinions, amend the Act to include the following requirements: • If a further opinion is not provided within seven days of the request, the inpatient treatment order lapses. • A statement that a person has the right to seek a further opinion. • A further opinion report is to be: a) in a form approved by the Chief Psychiatrist; and b) provided to the person who requested the further opinion no later than 14 days after the request is received. This timeframe is consistent with the timeframe in section 121(7)(a) of the Act which provides that a continuation for a community treatment order does not come into force or ceases if a further opinion is not obtained on or within 14 days of the request.	Supported.
7	With regards to transport orders and appropriate training and authorisation, amend the Act at sections 129(2), 133(1), 152(2), 154(1) and 560(1) to replace "mental health practitioner" with "authorised mental health practitioner."	Supported.
8	Amend the Act to: • Allow the destination specified in the transport order to be changed in certain specified/limited circumstances (and make any consequential amendments to Form 4A). • Allow the person carrying out the transport order to stop at a hospital on the way to the specified destination in certain circumstances (and make any consequential amendments to Form 4A). • Require notification of any transportation or changes in transportation to the patient's family, carer and personal support person.	Supported.
9	Amend the Act to provide for the transfer of an involuntary patient from one general hospital to another general hospital.	Supported.
10	Amend the Act (and make any consequential amendments to Form 7D) to provide that the police or transport officer, in consultation with the person who signed the Form 7D (or, if they are not available, the person in charge of the hospital or other place from which the patient is absent without leave or a medical practitioner employed by that hospital or other place), may take the patient to a place other than the place specified in the apprehension and return order if: (a) the change in destination is required to ensure the patient's health and safety; (b) the patient is apprehended somewhere other than the metropolitan area; or (c) prior to transportation, the police or transport officer who has apprehended the patient makes arrangements with another health service that has the capacity and expertise to assess the patient's fitness for travel.	Supported, subject to further investigation.
11	Amend the Act to require that wherever there is a change to destination specified in Form 7D, it is added to the suite of notifiable events, in order to ensure that family members, carers or personal support persons be notified of the change.	Supported.
12	Amend the Act to provide that the psychiatrist completing an examination in a general hospital can make an order authorising the person's continued detention to enable further examination, subject to the same provisions and time limits that apply to the detention of a person at an authorised hospital (72 hours on a Form 3C).	Supported, subject to further investigation.

13	Amend the Act at section 581(3) to limit the persons who can make a revocation order in consultation with relevant stakeholders to clearly identify whom the provision should be limited to.	Supported, subject to further investigation.
14	Amend the Act to provide that an order authorising reception and detention in an authorised hospital for further examination can be revoked when the person is examined by a psychiatrist prior to being received at the authorised hospital, and the psychiatrist determines that the order is no longer required.	Supported.
15	Amend the Act to allow an amendment of the authorised hospital specified in the order authorising a person's reception and detention at an authorised hospital under section 61(1)(c) of the Act.	Supported.
16	Amend the Act to provide that a person may be transferred from one authorised hospital to another while on a Form 3C, provided the Form 3C remains current, the transfer is required for clinical reasons, and those reasons are clearly documented and placed on the person's file.	Supported, subject to further investigation.
17	Amend the Act to: • Provide for the extension of communications technology to people in the metropolitan area for the purposes of assessment and examination, but only in limited circumstances where the use of communications technology is clinically necessary and only in accordance with the Chief Psychiatrist's guidelines. • Require that when an assessment or examination has been undertaken by communications technology, the reasons why are stated on the resulting order.	Supported, subject to further investigation.
18	In support of community treatment order examinations and consumer rights amend section 77(f) to remove the word "authorised."	Supported.
19	Amend the Act to require the Mental Health Tribunal to consider, at the time of an electroconvulsive therapy application, whether an involuntary patient is still in need of an involuntary order, with the conditions that: (a) this does not have the effect of extending the amount of time between the electroconvulsive therapy application and the hearing date; and (b) this review of the patient's involuntary status is different to and separate from the patient's initial and periodic reviews otherwise required by the Act and does not affect the timing of those reviews unless those reviews would have been due within 14 days or less of the electroconvulsive therapy hearing.	Supported, subject to further investigation.
20	Amend section 410(b) of the Act to remove the requirement for an electroconvulsive therapy treatment plan to include: (a) the mental health service at which it is proposed to perform the electroconvulsive therapy; and (b) the minimum period that it is proposed will elapse between any two treatments.	Supported, subject to further investigation.
21	Amend section 218 to include that an order extending a seclusion order must be in the form approved by the Chief Psychiatrist for that purpose.	Supported.

22	Amend the Act to: • Expressly state that reasonable force and associated use of mechanical restraints approved by the Chief Psychiatrist may be used by relevant persons (such as ambulance providers and transport officers) when apprehending, transporting and detaining a person under the Act during transport, subject to the other requirements relating to restraint, detention and safeguards. • Enable the Chief Psychiatrist to approve the types of mechanical restraint which may be used, and to monitor and report on the use of mechanical restraint.	Supported, subject to further investigation.
23	Amend the Act to: • Allow services to notify an "on duty psychiatrist" of the use of seclusion and restraint, supported by an obligation to inform the treating psychiatrist, when the treating psychiatrist is unavailable. • Provide for notification of the use of seclusion or restraint occurs "as soon as practicable" rather than "in due course."	Supported.
24	Amend the Act to define chemical restraint and regulate its use during transportation.	Supported, subject to further investigation.
25	Amend the Act to introduce a principle related to the use of restrictive practices to provide that a restrictive intervention can only be used to prevent imminent and serious harm to that person or another individual, or, in the case of bodily restraint, to administer treatment or medical treatment to the person.	Supported, subject to further investigation.
26	The Mental Health Commission undertake further consultation and analysis to develop recommendations regarding potential amendments to address identified issues relating to the use of seclusion and restraint in certain settings. Consideration of appropriate safeguards and clear circumstances in which reasonable force can be authorised are to be thoroughly examined as are any staff resource implications.	Supported.
27	Amend the Act to prescribe that voluntary patients on admission be informed: (a) of their lawful right to leave a ward, whether locked or unlocked, both orally and in writing; and (b) that at any time a psychiatrist can decide that a voluntary patient is in need of an inpatient treatment order, if the criteria in section 25 are satisfied.	Supported, subject to further investigation.
28	Amend the Act to prescribe that when an identified person raises a complaint, the Chief Mental Health Advocate's powers and functions under the Act continue until that complaint is resolved or no further action can reasonably be taken even when the person is no longer an identified person (i.e. when they have been discharged from public mental health services entirely), and subject to the person's consent.	Supported.
29	Amend the Act so that voluntary older adult inpatients in authorised units be considered identified persons under the Act, so they can be assisted by the Chief Mental Health Advocate.	Supported.
30	Amend the Act to require the Chief Mental Health Advocate to be notified of an involuntary treatment order within 48 hours for adults and two hours for children.	Supported.
31	Amend the Act to require the Chief Mental Health Advocate to be notified when a child is referred for examination under a Form 1A; ordered to be detained for assessment while a voluntary patient under a Form 2; or ordered to be detained under a Form 3A or for continuing detention under a Form 3A. Consultation is to occur with relevant stakeholders to identify suitable timeframes for notification.	Supported.
32	Amend the Act to provide that a mental health advocate has the power to make inquiries regarding the discharge, or withdrawal of care to, a person by a mental health service or other place.	Supported.

33	Amend the Act to require notification to the Chief Mental Health Advocate within 24 hours of the decision being made not to contact the personal support person (rather than "as soon as practicable").	Supported.
34	Amend the Act to add a requirement to notify the Chief Mental Health Advocate (within a specified timeframe) regarding the admission into and detention of a mentally impaired accused person in an authorised hospital.	Supported, subject to further investigation.
35	Amend the Act to provide that the Chief Psychiatrist can access information about former and deceased patients, when doing so is necessary for the discharge of the Chief Psychiatrist's obligations under the Act.	Supported.
36	Amend section 577(1) of the Act to allow for persons, who carry out a function under the Act and who obtain information that relates to an individual who is deceased, to disclose that information in response to a written request from: (a) a coroner, a coroner's registrar, a coroner's investigator or a member of the staff of a coroner's court in connection with an investigation into the death of the individual; or (b) a medical practitioner who is performing a post-mortem on the body of the individual at the direction of a coroner.	Supported.
37	Amend the Act to remove section 582(2) regarding the medical record having to be in an approved form; but retain section 582(1) regarding the requirement to keep a medical record.	Supported.
38	Amend the Act to require general hospitals to provide copies of inpatient treatment orders and revocation orders to the Chief Psychiatrist.	Supported.
39	Amend the Act to require a mental health service to report to the Chief Psychiatrist every seven days (following initial notification under section 303) when children (patients aged under 18 years) are inpatients in wards that also admit adults. Consultation is to occur with relevant stakeholders to identify how this provision could apply to youth wards.	Supported.
40	Amend the Act to require: • The treating psychiatrist of an involuntary patient to prepare and submit a written report prior to a Mental Health Tribunal hearing. Such a report should contain information required by the Act. • The report be submitted to the Mental Health Tribunal, the involuntary patient and the involuntary patient's representative at least 72 hours prior to the hearing. • That mental health services provide an involuntary patient's representative with timely, free and full access to medical files and records relating to the patient (as enabled by sections 248-251) at least 72 hours prior to the Mental Health Tribunal hearing.	Supported.
41	Amend the Act to allow for the Mental Health Tribunal to mandate clinician attendance at hearings by means other than summons, such as by formal direction.	Supported, subject to further investigation.
42	Amend the Act to provide that where the Mental Health Tribunal conducts a review upon application that this is regarded as the "last review" date when calculating the next periodic review period.	Supported.
43	Amend the Act to provide that, if a party requests reasons for a decision by the Mental Health Tribunal, a written transcript of the part of proceedings that contain the reasons for the decision given orally may suffice.	Supported, subject to further investigation.

44	Amend the Act to allow the Mental Health Tribunal to correct mistakes, accidental errors or omissions in its reasons or decisions. The amendment should include an obligation on the part of the Mental Health Tribunal to: (a) make a note of the error and any correction in the relevant case file; (b) notify the person (and the person's advocate or legal representative, if any) to whose matter the correction relates; and (c) distribute the correct version of the document to all parties, alerting them of the error and any correction.	Supported, subject to further investigation.
45	Amend the Act to clarify that a decision of the Mental Health Tribunal has immediate effect, subject to any terms otherwise stated in the order, and the enforceability of the decision is not dependent on a written notice of decision mailed or otherwise communicated to the parties.	Supported.
46	Amend the Act to require mental health service providers to notify the Mental Health Tribunal, the Chief Mental Health Advocate and the Mentally Impaired Accused Review Board (as relevant) when a community treatment order has been made without referral and is since confirmed or is no longer in force within 24 hours.	Supported.
47	Amend the Act to require a copy of transfer orders between hospitals to be provided to the Mental Health Tribunal, the Chief Mental Health Advocate, and the Chief Psychiatrist.	Supported, subject to further investigation.
48	Amend the Act to require that a copy of a continuation order is provided to the Mental Health Tribunal, the Chief Mental Health Advocate and to the Chief Psychiatrist where a person is in a general hospital on an involuntary treatment order.	Supported, subject to further investigation.
49	Amend the Act to allow the Chief Psychiatrist to designate, by order published in the Government Gazette, persons with the relevant training and experience as "psychiatrists" under the Act (and to revoke any such designation) following consultation with the Medical Board of Australia established under the Health Practitioner Regulation National Law (Western Australia) and the Royal Australian and New Zealand College of Psychiatrists.	Supported.
50	Amend the Act to allow the Chief Psychiatrist to designate, by order published in the Government Gazette, a child and adolescent psychiatrist for the purposes of the relevant sections of the Act, provided the Chief Psychiatrist is satisfied that the psychiatrist to be designated has the relevant qualifications and clinical training in the treatment of mental illness in children.	Supported, subject to further investigation.
51	Amend the Act throughout to ensure gender-neutral terminology is used.	Supported.
52	Amend the Act to enable the Mental Health Commission to deal with property for the purpose of supporting people with mental health services. This provision could be modelled on the *Alcohol and Other Drug Act 1974* (WA).	Supported.

Other findings

Throughout the Review, a broader series of findings were identified that do not specifically require legislative amendments. The Cook Government recognises the importance of these and the impact of these on the operation of the Act.

The Government, therefore, supports a parallel process to the implementation for legislative amendments, overseen by the Mental Health Commission with input and implementation by the most appropriate stakeholders, to further explore the non-legislative findings and consider their development and implementation where applicable.

Of note, key issues relate to the provision of culturally secure care and treatment; improving accessibility (particularly through translation of education material into languages other than English and access to interpreters); and improvements to education, training, and compliance.

Next steps

The tabling of the Report on the Statutory Review marks a significant step towards the drafting of legislative amendments. The Government will now prepare a Bill to amend the *Mental Health Act 2014* in response to the Review. The amendment Bill will be made available for public comment and the Government commits to targeted consultation with key stakeholders as the Bill progresses. Where further consultation on specific issues is indicated this will occur concurrently and be incorporated into legislative amendments where appropriate.