Comparison of Key Provisions – Mental Health Bill 2014 and *Mental Health Act 2000*

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
Chapter 1 Preliminary	
The objects of the Bill more appropriately state the legislative objectives, including distinguishing between the 'civil' and forensic purposes of the Bill. The Bill includes principles relating to victims of unlawful acts, to guide persons involved in the administration of the Bill. The meaning of 'involuntary patient' reflects the revised approaches in the Bill, namely persons subject to: • an examination authority (replacing a justices examination order) • a recommendation for assessment • a treatment authority (replacing an involuntary treatment order) • a forensic order • a court treatment order (a new order) • a judicial order (replacing various court orders). The meaning of 'treatment criteria' has been updated. The meaning of 'less restrictive way' is included in the Bill. This is a key element in determining whether a person is to be placed, and maintained, on a treatment authority. A revised definition of 'capacity to consent to be treated' is included in the	The principles in the Bill for persons with a mental illness are comparable to the MHA, with the following notable inclusions: • the role of support persons being involved in treatment and care • the needs of Aboriginal people and Torres Strait Islander people • the needs of persons from culturally and linguistically diverse backgrounds • the needs of minors • recovery-oriented services The meaning of 'mental illness' is comparable to the MHA.

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
Bill.	
Chapter 2 Treatment authorities on examination and assessment	
A key change in the examination process is the replacement of 'justices examination orders' with the more appropriately managed 'examination authorities', which are made by the Mental Health Review Tribunal. 'Emergency examination orders' are replaced by the emergency transport powers in the *Public Health Act 2005*. These powers apply in emergency situations for persons who appear to have a mental illness, as well as persons who are significantly affected by drugs or alcohol. If a person's treatment needs can be met under an advance health directive or with the consent of a personal guardian or attorney (a 'less restrictive way') a treatment authority cannot be made. There are no longer separate assessment criteria and treatment criteria outlined in the Bill. The Bill instead requires a prima facie case that the treatment criteria may apply for a recommendation for assessment to be made. Requirements are included in the Bill to discuss an assessment, and treatment and care to be provided, with the person and, where practicable, with support persons. A treatment authority may be an inpatient category or community category (comparable to the MHA), but the 'default' category is to be community (i.e. the category must be community unless the person's treatment and care cannot be met this way).	The powers that can be exercised under an examination authority are comparable to those that can be exercised under a justices examination orders under the MHA. The powers that can be exercised under an emergency examination authority (under the Public Health Act) are comparable to those that can be exercised under an emergency examination order under the MHA. The powers that can be exercised in assessing a person, including the detention of the person, are comparable to the MHA. If a treatment authority is made by an authorised doctor who was not a psychiatrist, the requirement to review the making of the authority by a psychiatrist is comparable to that which applies for involuntary treatment orders under the MHA.
Chapter 3 Persons in Custody	
The Chief Psychiatrist is to be notified if a person is not transferred to an authorised mental health service within 72 hours. This enables the Chief Psychiatrist to take action, as necessary, to ensure the person receives	The Bill makes provision for when a person in custody (e.g. in a watch house or prison), may be transferred to an authorised mental health

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
timely treatment.	service for: • an assessment to decide if a treatment authority should be made for the person, or • for treatment and care for the person's mental illness. These provisions are comparable with the MHA, but have been presented in a clearer and more transparent way.
Chapter 4 Psychiatrist reports for serious offences	
A person subject to a treatment authority, forensic order or court treatment order may request a psychiatrist report be prepared if they are charged with, or have an outstanding, serious offence. This request may also be made by a representative of the person, for example, a legal representative or nominated support person. A referral to the Mental Health Court may then be made by the person or the person's lawyer. The Chief Psychiatrist may also direct that a psychiatrist report be prepared in relation to person who has committed a serious offence (regardless of whether the person is also currently subject to an authority or order) if it is in the public interest. A referral to the Mental Health Court may then be made by the Chief Psychiatrist if it is in the public interest. The Bill provides that a serious offence is an indictable offence, other than an offence that must otherwise be heard by a Magistrate under the Criminal Code This approach replaces the current model whereby a psychiatrist report is mandatorily prepared for an involuntary patient for any indictable offence. Currently, references are made to the Mental Health Court by the Chief Psychiatrist as a result of these reports whether or not the relevant person wishes this to occur.	Provisions relating to the suspension of proceedings where a psychiatrist report is being prepared are comparable to the MHA.

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
Chapter 5 Mental Health Court References	
The Bill amends the jurisdiction of the Mental Health Court to a 'serious offence', which is an indictable offence, other than an offence that must otherwise be heard by a Magistrate under the Criminal Code. The Bill includes a revised definition of 'unsound mind", reflecting its use under the Criminal Code. Under the Bill, the Mental Health Court may make a less intensive order - a court treatment order. Court treatment orders will 'tie' the person to involuntary treatment without the stringent oversight that applies to persons on forensic orders. Unlike forensic orders, the Court (and the Mental Health Review Tribunal) does not set limits on the extent of community treatment under court treatment orders. As with treatment authorities, this will be the responsibility of authorised doctors in accordance with the criteria established under the Bill. As with treatment authorities, these persons will be placed on a community category, unless it is necessary for the person to be an inpatient. However, like forensic orders, only the tribunal may revoke a court treatment order. The criteria for the Mental Health Court to make decisions have been modified and made consistent throughout the Bill. This mainly applies to the making of orders and the extent of treatment in the community. Persons placed on a forensic order may be on: • an inpatient category with no limited community treatment • an inpatient category with limited community treatment, or • a community category. This approach replaces the model under the MHA, which did not have a community category. Under the MHA, 'limited community treatment' extended to treatment in the community on an ongoing basis.	Procedural provisions in the Bill are comparable to the MHA. Mental Health Court decisions in relation to a person being of unsound mind or unfit for trial are comparable to the MHA. Provisions related to the 'Right to Trial' are comparable to the MHA. The power for the Mental Health Court to make forensic orders is comparable to the MHA. A forensic order may be a forensic order (mental condition) or a forensic order (disability). The authority to treat under a forensic order (mental condition) and provide care under a forensic order (disability) is comparable to the MHA. Detention is also authorised for inpatient category patients under forensic orders (called a 'residential category' for a forensic order (disability) patient).

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
The Bill modifies the approach to Mental Health Court proceedings if there is a fact that is substantially material to the opinion of an expert witness, such as a psychiatrist. Under the Bill, the Mental Health Court can decide the matter in dispute rather than referring the whole proceeding to a criminal court. For serious violent offences (a 'prescribed offence'), the Court can impose a non-revoked period for a forensic order of up to 7 years.	
Chapter 6 Powers of courts during criminal proceedings and related processes	
The Bill provides that a Magistrate may discharge a person charged with an offence if the court is reasonably satisfied, on the balance of probabilities, that the person was of unsound mind when the offence was allegedly committed or appears to be unfit for trial. Magistrates may also order that a person before the court be examined by an authorised doctor to decide if a treatment authority should be made for the person or to make recommendations about the person's treatment and care.	The power for a Supreme Court or District Court to refer a person to the Mental Health Court is comparable to the MHA. The provisions in relation to forensic orders (Criminal Code) are comparable to the MHA. The power for a court to detain a person in an authorised mental health service during a trial is comparable to the MHA.
Chapter 7 Treatment and care of patients	
The provisions related to the treatment and care of patients replace the disparate and limited provisions in the current Act. Key changes from the MHA include: • stating the relationship between community treatment and a person's custodial status under another Act • stating the responsibility of administrators and authorised doctors for providing treatment and care • replacing the use of 'treatment plans' under the MHA by a statutory obligation to record planned and actual treatment	The arrangements for authorised doctors to decide the extent of community treatment for persons on orders or authorities are broadly comparable to the MHA. However, the criteria for making these decisions are clearly stated for each type of order or authority, and are consistent throughout the Bill. The provisions related to the approval of temporary absences are comparable to the MHA. The provisions related to electroconvulsive therapy are otherwise comparable to the MHA.

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
• requiring authorised doctors to have regard to the views of the patient and support persons, and • requiring authorised doctors to document the patient's treatment and care while being treated in the community. An authorised doctor is not required to revoke a treatment authority if the person's capacity to consent to treatment is not stable. The requirement for the Chief Psychiatrist to notify the Tribunal of the imposition of a monitoring condition for a patient to wear a tracking device triggers an automatic review of the decision by the Tribunal within 21 days. Limited community treatment for classified patients and patients subject to judicial orders is limited to on-ground escorted leave. For the performance of electroconvulsive therapy, the approval of the Tribunal is required if the person is a minor. The Bill distinguishes between psychosurgery (where brain tissue is intentionally damaged or removed to treat a mental illness) and non-ablative neurosurgery, such as deep brain stimulation techniques. Under the Bill, psychosurgery is prohibited. Non-ablative neurosurgery can only be performed with the consent of the person and the approval of the Tribunal. Part 10 of chapter 7 (Provisions about advance health directive directives and nominated support persons) are new provisions. The role of the 'allied person' under the MHA is subsumed into these more comprehensive provisions.	
Chapter 8 Use of mechanical restraint and seclusion	
The offence of using mechanical restraint and seclusion in an authorised mental health service is extended to include voluntary inpatients of an authorised mental health service.	

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
All uses of mechanical restraint must be approved by the Chief Psychiatrist. This is a change from the current MHA whereby an authorised doctor may approve the use of restraint, provided the device used in the restraint is approved by the Chief Psychiatrist. The criteria for applying mechanical restraint have been strengthened, including requiring the patient to be continuously observed. The Chief Psychiatrist may require an approval to be sought be way of a reduction and elimination plan, the purpose of which is to eliminate the use of restraint for the patient. Mechanical restraint must be removed if it is no longer required. The Chief Psychiatrist may give an authorised mental health service written directions about the use of seclusion. This may include that seclusion only be used under an approved reduction and elimination plan. Seclusion may be authorised by the health practitioner in charge of the inpatient unit or an appropriately qualified person authorised by the health practitioner ('Senior registered nurse on duty' under MHA). A timeframe for this authorisation has been included in the Bill and is limited to not more than 1 hour. Seclusion for a patient must end if it is no longer required.	
Chapter 9 Rights of patients and others	
The Bill establishes a stand-alone chapter dealing with the rights of patients and others. The Bill includes the right to be visited by family, carers and other support persons and to communicate, in a reasonable way, with other persons. Provisions are included in the Bill in relation to understanding oral information to assist in the treatment and care of a person. The Bill requires explanations to be given to the patient's nominated support	The Bill continues a requirement for a statement of rights. The Bill continues the ability for a patient to be visited by a health practitioner, legal or other adviser but gives the provisions more prominence than is the case in the MHA.

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
person and, where appropriate, other support persons. The provisions in relation to the giving of written notices replace the disparate and inconsistent provisions in the MHA. The Bill requires notices to be given to the patient's nominated support person, personal guardian or attorney. The Bill states that patient, or someone on behalf of the patient, may request a second opinion about the patient's treatment and care. The Bill states a patient's right to privacy. The Bill outlines the rights and responsibilities of family, carers and other support persons. The Bill requires public sector mental health services to appoint or engage patient rights advisers to advise patients and support persons are advised of their rights and responsibilities under the Bill.	
Chapter 10 Chief psychiatrist	
The Bill lists matters for which policies and practice guidelines may be made, and mandates that policies must be made on a range of matters. The Bill also requires policies and practice guidelines to be made publicly available.	The Bill continues the role of Chief Psychiatrist (renamed from the Director of Mental Health under the MHA). The functions, powers and independence of the Chief Psychiatrist are comparable to the MHA. The requirement to produce an annual report continues under the Bill, but its content has detailed in the Bill. The ability for the Chief Psychiatrist to undertake investigations is comparable to the MHA. The ability for the Chief Psychiatrist to take action where there is a serious risk to persons or public safety is comparable to the MHA. The provisions in relation to forensic information orders are continued in the Bill as "information notices", but are approved by the Chief Psychiatrist rather than the Tribunal. Timeframes for making decisions in relation to information notices have been included in the Bill to ensure information is

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
	included to victims in a timely manner. The information that can be provided under a notice is comparable to the MHA, with Schedule 1 stating more clearly this information and including the new requirement that brief reasons for an increase in the person's treatment in the community be provided.
Chapter 11 Authorised mental health services	
The Bill provides that the Chief Psychiatrist may include conditions when declaring an authorised mental health service. This supports service delivery options in, for example, smaller rural or regional hospitals. The appointment of authorised mental health practitioners is to be made by Administrators of authorised mental health services rather than the Chief Psychiatrist (Director of Mental Health under the MHA). The provisions in the Bill related to the transfer of patients replace the disparate provisions in the MHA. The requirement for interstate agreements to be in place for patients to be transferred interstate has been removed. The Bill consistently deals with the transport of persons, including the administration of medication for the purpose of transporting a patient. Chief Psychiatrist approval is required for any use of mechanical restraint while a person is being transported.	The declaration of authorised mental health services and high security units is comparable to the MHA. The appointment of authorised doctors and their functions is comparable to the MHA. The functions authorised mental health practitioners are comparable to the MHA. The provisions related to the security of authorised mental health services, including searches in high security units, are comparable to the MHA.
Chapter 12 Mental Health Review reviews and applications	
Additional functions for the Tribunal under the Bill are: • the review of court treatment orders • the review of the imposition of particular monitoring conditions by the Chief Psychiatrist (use of tracking devices)	The role of the Tribunal in deciding whether to continue or revoke an order or authority, and the extent of treatment in the community under the order or authority are comparable to the MHA. The role of the Tribunal in deciding fitness for trial, and the actions taken after a review, are comparable to the MHA.

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
• the hearing of applications for examination authorities • the hearing of applications for the transfer of forensic order and court treatment order patients into and out of Queensland. On a review of a forensic order, the Tribunal may make a court treatment order. The Tribunal will review a forensic order (Criminal Code) to decide, among other things, whether the order should become a forensic order (mental condition) or a forensic order (disability). For clarity and transparency, the Bill provides clear and consistent criteria for decisions made by the Tribunal. This mainly applies to the continuing or revocation of orders and authorities, and the extent of treatment in the community. The initial review of the making of a treatment authority is to occur within 28 days (currently 6 weeks for involuntary treatment orders). For a person on a treatment authority for 12 months, the Tribunal is to consider whether the person's treatment needs may be met in a less restrictive way with the consent of a personal guardian.	The role of the Tribunal in hearing applications for regulated treatments is comparable to the MHA (noting that psychosurgery is prohibited under the Bill). Many of the procedural provisions are comparable to the MHA.
Chapter 13 Appeals	
	The appeal provisions are comparable to the MHA.
Chapter 14 Monitoring and Enforcement	
The Bill significantly enhances the monitoring provisions from the MHA. Currently, the MHA has limited provisions relating to investigative powers that may result in remedial actions rather than prosecutions, and entry to places or warrant provisions that may be enacted in circumstances where involuntary detention is required.	

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
Chapter 15 Offences and Legal Matters	
	The offence and legal matter provisions are comparable to the MHA.
Chapter 16 Establishment and administration of Tribunal and court	
<u>Mental Health Review Tribunal</u> The Bill provides for the appointment of a deputy president. The Bill requires the president to develop competencies for tribunal members. The Bill requires a treating practitioner to give a report about a patient for specified reviews at least 7 days before a hearing. The Bill requires a party to give any document to be relied on at a hearing to the other party at least 3 days before a hearing. The Bill states that the person the subject of a proceeding may be represented by a nominated support person, a lawyer or another person. The Bill states that the person the subject of a proceeding may be accompanied by a nominated support person, family member, carer or other support person. The Bill requires the Tribunal to appoint, at no cost to the person, a lawyer for the following hearings: • if the person is a minor • for a fitness for trial review • for a review of the imposition of a monitoring condition • for an electroconvulsive therapy treatment application • at a hearing where the Attorney-General is to appear.	The provisions relating to the establishment and administration of the Tribunal and the Mental Health Court are otherwise comparable to the MHA. The 'Review of Detention' provisions are comparable to the MHA.

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
An adult person may waive this right. For proceedings for a review of a treatment authority where the person does not wish to attend or be represented by another person, the matter may be heard 'on the papers'. <u>Mental Health Court</u> The Mental Health Court may be assisted by a person with expertise in the care of persons who have an intellectual disability. Assisting clinicians may be appointed for up to 6 years.	
Chapter 17 Confidentiality	
The Bill enables information to be disclosed for specific purposes, additional to those under the MHA, namely: • to assist in identifying persons who may have a mental health defence • to assist in identifying and offering support to victims • to assist in the preparation of a private psychiatrist report • to provide relevant information to a patient rights adviser • to provide limited information to the victim of a person who is a classified patient (this replaces classified patient information orders under the MHA) • to enable information to be disclosed to a lawyer preparing for a proceeding of the Mental Health Court or the Tribunal • the disclosure of photographs of a person required to return.	The other confidentiality provisions are otherwise comparable to the MHA.

Key provisions that are <u>different</u> from the *Mental Health Act 2000* (MHA)	Key provisions that are <u>comparable</u> to the *Mental Health Act 2000* (MHA)
Chapter 18 General provisions	
A provision in the Bill enables information to be disclosed by QCAT about whether a personal guardian has been appointed for a person.	The other general provisions are otherwise comparable to the MHA.