

MENTAL HEALTH ACT 2014 STATUTORY REVIEW STEERING GROUP

TERMS OF REFERENCE

1.0 BACKGROUND

Section 587 of the *Mental Health Act 2014* (the Act) requires that the Minister for Mental Health (Minister) undertake a statutory review (review) of the operation and effectiveness of the Act as soon as practicable, five years from the commencement of the Act. In addition, the Minister is required to prepare a report about the outcome of the review and table the report in Parliament. The Mental Health Commission (MHC) is the government agency with the principal responsibility of assisting the Minister in the administration of the Act, including the review of the Act.

The MHC was required by State Government regulatory requirements to undertake a two-year Post-Implementation Review (PIR) of the Act, with a focus on the regulatory impact of the Act and whether the objects of the Act (Objects) are being achieved. The PIR was completed in March 2018, and is available on the MHC's website.

Findings of the PIR identified a number of issues and areas for improvement and development. Although progress has been made on a number of the PIR recommendations, other relevant recommendations are to be considered in the context of the current review.

Alongside the PIR, a number of legislative amendments have been identified since the commencement of the Act. Significant consultation has already occurred in relation to these amendments (referred to in the Terms of Reference (see 2.1) as the proposed and deferred amendments). Any further consultation required on the proposed and deferred amendments will be undertaken in the context of the current review.

To progress the review, the MHC is undertaking an open and extensive public consultation process, the results of which will inform the development of a report and recommendations that will ultimately be tabled in Parliament.

2.0 TERMS OF REFERENCE AND GUIDING PRINCIPLES

2.1 Terms of Reference

The review will:

1. Review the operation and effectiveness of the Act, ensuring that there are multiple perspectives including from carers, consumers and clinicians.
2. Include consideration of the following:
 - a) recommendations and outcomes of the Post-Implementation Review;
 - b) the set of proposed amendments to the Act;
 - c) the set of proposed deferred amendments to the Act;
 - d) the register containing issues raised by stakeholders, studies, or review reports;
 - e) translational issues relating to the Act previously reported to the Office of the Chief Psychiatrist;

- f) issues specifically encountered by clinicians in applying the provisions of the Act; and
- g) any other relevant matters or issues raised by stakeholders during the process of consultation for the review.

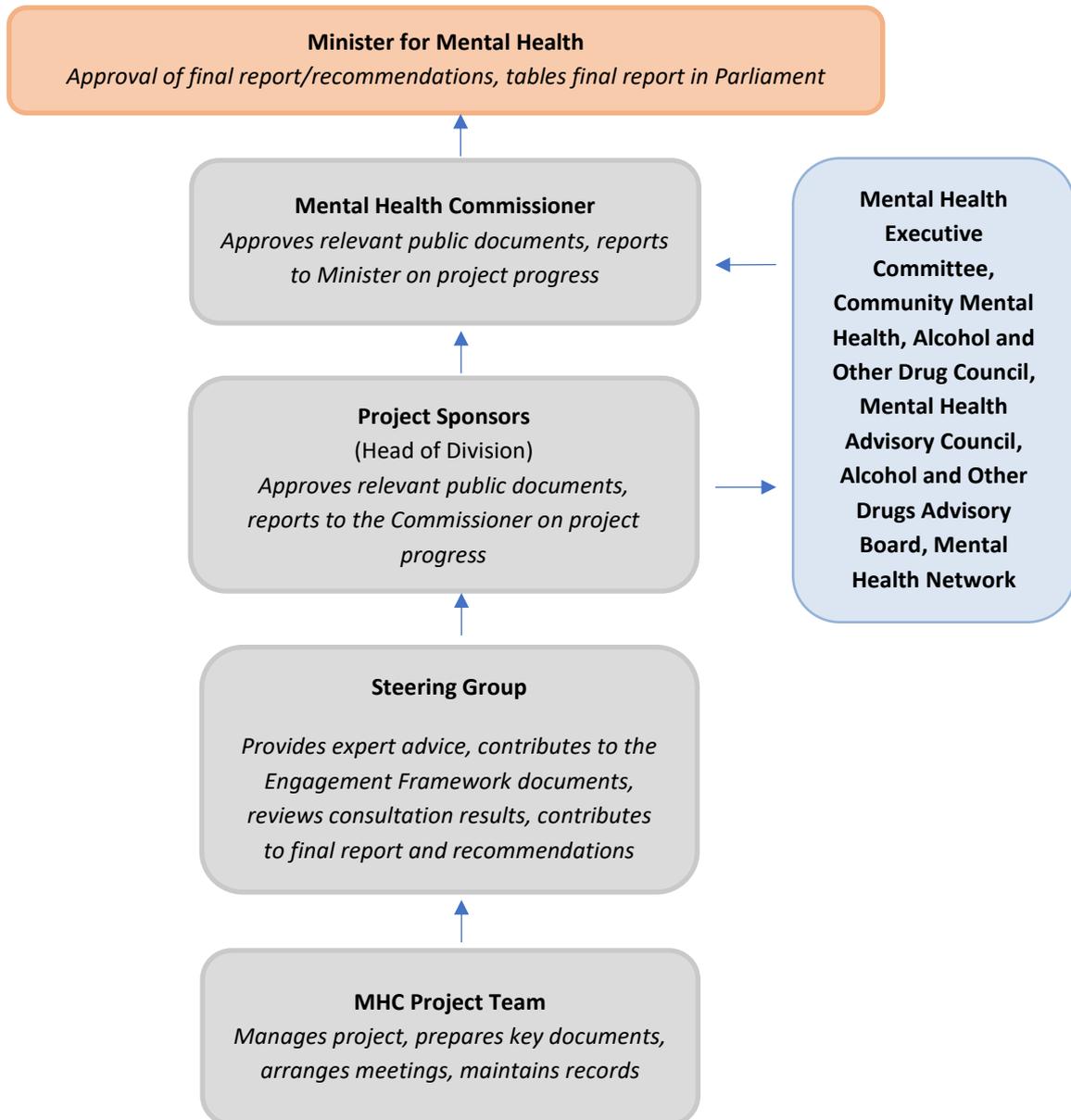
2.2 Guiding Principles

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 through the use of 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 should 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.
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.
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.

3.0 GOVERNANCE

Below sets out the Governance structure of the review.

Diagram 1. Mental Health Act 2014 Statutory Review Governance Structure



3.1 Steering Group

To oversee the review process, contribute expertise and participate in the consideration of consultation results, a Steering Group will be formed.

3.1.1 Roles and responsibilities

The role of the Steering Group is to lead and guide the review process and participate in the development of the final report and recommendations that will be presented to Government. In summary, the members of the Steering Group will be required to:

- review evidence and background information relevant to the review;
- review and provide advice to the MHC on the Discussion Document that will be used to support the public consultation process;
- contribute to the public consultation process through advising on the preferred consultation approach, and where appropriate participating in or facilitating consultations;
- consider key issues that have been raised during the consultation process, and through other consultation processes such as the Post Implementation Review and Issues Register; and
- contribute to the development of the recommendations contained in the final report, which will be provided to Government.

3.1.2 Reporting

The Mental Health Commissioner will report to the Minister on the review process where required and final decision in relation to the recommendations in the final report will reside with the Minister.

3.1.3 Membership

The membership of the Steering Group is below, however, experts and other key stakeholders will be co-opted into the group as required:

- Independent Chair, Ms Debora Colvin;
- Chief Advocate, Mental Health Advocacy Service, Dr Sarah Pollock;
- Chief Psychiatrist, Office of the Chief Psychiatrist, Dr Nathan Gibson;
- President, Mental Health Tribunal, Ms Karen Whitby;
- Psychiatrist, Head of Clinical Service, Dr Mark McAndrew;
- Chairperson, Aboriginal Health Council of Western Australia, Ms Vicki O'Donnell;
- Executive Director Patient Safety and Clinical Quality Directorate, Department of Health, Ms Audrey Koay;
- Ms Carli Sheers (Consumer representative);
- Chief Medical Officer, Mental Health, Mental Health Commission, Dr Sophie Davison;
- Head of System Development, Mental Health Commission, Ms Kim Lazenby.
- Carer representative, TBC.

3.1.4 Right to Co-opt

People with special knowledge and expertise may be co-opted to this group by the chairperson, for example, when considering the recommendations to be included in the final report.

3.1.5 Proxies

The membership of the committee is based on individual expertise. As such, members may not nominate a proxy if they are unable to attend a meeting, unless they seek prior approval from the Chair.

3.1.6 Confidentiality

The deliberations of the Steering Group are considered highly confidential. Members are not to communicate, or on-forward material received without pre-approval by the Chair and are expected to maintain the integrity and security of information received. Members are required to sign a confidentiality and non-disclosure agreement (**Attachment**).

The Minister will be kept informed of the outcomes of the Steering Group.

3.1.7 Conflicts of Interest

Conflicts of interest will be a standing agenda item. Members must declare any conflicts of interest and their involvement resolved to the satisfaction of the Chair prior to proceeding with the related matter.

3.1.8 Chairperson

The chairperson will be an independent professional with experience and knowledge of the Act. The chairperson will be responsible for chairing the meetings.

3.1.9 Secretariat and Minutes

The secretariat will be provided by the MHC. The MHC will convene meetings, prepare the agenda and minutes, receive reports and deal with correspondence. Minutes of each meeting will be recorded and distributed promptly to each member of the Steering Group.

3.1.10 Meetings

It is anticipated approximately five meetings will be required, however this will be dependent on the volume of feedback received during the consultation process and therefore the breadth of issues to discuss.

MENTAL HEALTH ACT 2014 STATUTORY REVIEW STEERING GROUP CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

1. CONFIDENTIAL AND PROPRIETARY INFORMATION

As a member of the Steering Group, you may have access to Confidential and Proprietary Information that is sensitive. Any unauthorised use or disclosure of this information would cause serious and irreparable injury to the Steering Group.

- 1.1 The Steering Group requires that Confidential Information must be kept strictly and absolutely confidential and always handled as required in accordance with the Steering Group's Code of Conduct and the Mental Health Commission's Conflicts of Interest Policy and Guidelines.
- 1.2 The Steering Group requires that all persons authorised to have access to Confidential Information acknowledge their obligations to uphold confidentiality.
- 1.3 You are subject to a duty of confidentiality under the common law when you receive or have access to confidential information

2. NON-DISCLOSURE

You acknowledge that:

- 2.1 You agree to use your best efforts to safeguard the Confidential and Proprietary Information of the Steering Group, and to prevent the unauthorised, negligent or inadvertent disclosure thereof.
- 2.2 You shall not, without the prior written approval of the Chair of the Steering Group, directly or indirectly, disclose the Confidential and Proprietary Information to any other person or business entity.
- 2.3 You shall promptly notify the Chair in writing of any unauthorised, negligent or inadvertent disclosure of Confidential and Proprietary Information.
- 2.4 You shall only use Confidential and Proprietary Information for the completion of your member duties, as specified in the Terms of Reference, and never for your personal gain.
- 2.5 You shall be liable under this agreement to the Steering Group for any disclosure in violation of this agreement.

3. DECLARATIONS

You acknowledge that:

- 3.1 Any changes in circumstances relating to criminal offences or if there is a discontinuance of essential qualification or membership required for your position is reported to the Steering Group Chair or the Secretariat, Mental Health Commission.

4. CONSEQUENCES OF A BREACH OF CONFIDENTIALITY

Any breach of your confidentiality obligations may be considered misconduct and may lead to the following consequences, as applicable:

- 4.1 Your misconduct may result in the termination of your membership within the Steering Group.
- 4.2 Your misconduct, if it is likely to constitute a breach of section 81 of the *Criminal Code* in relation to unauthorised disclosure of official information may be reported to the Police.
- 4.3 Your misconduct may be reported to the Corruption and Crime Commission (CCC).
- 4.4 Your misconduct may be considered to be in breach of discipline and may be dealt within accordance with the *Public Sector Management Act* and the Department of Premier and Cabinet's 'Disciplinary Procedures Guide'.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

I, _____, agree with and acknowledge this entire agreement.

MEMBER

Member Name

Signature

_____/_____/_____
Date

WITNESS

Witness Name

Signature

_____/_____/_____
Date

CHAIR

Chair

Signature

_____/_____/_____
Date