

Appendix 3

Advertised Call for Submission No.2148

Key Legislation, policies and frameworks

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Introduction

Service providers are required to understand and abide by directions articulated in a range of government policies, frameworks and procedures as well as a range of legislative requirements. Key policies, frameworks and legislation relevant to the provision of Mental Health Community Support Services (MHCSS) are detailed in this document.

Please note this information is provided as a guide only and does not constitute an exhaustive list of all government legislative, policies, frameworks and procedures that are applicable to the delivery of MHCSS.

Policy and Legislative context

Legislative context

Mental Health Act 1986

The Victorian *Mental Health Act 1986* provides a legislative framework for the care, treatment and protection of people with mental illness in Victoria. The *Mental Health Act* establishes procedures for initiating involuntary treatment, making involuntary treatment orders and independent review by the Mental Health Review Board.

Key features of the *Mental Health Act* are its emphasis on rights and the requirement that treatment should be provided in the least possible restrictive environment and in the least possible intrusive manner. The *Mental Health Act* provides that interference with the rights, privacy, dignity and self-respect of people with mental illness must be kept to the minimum necessary in the circumstances.

Proposed reforms to Victoria's mental health legislation are highly relevant to all services supporting people living with mental illness. These reforms, which are likely to come into effect during 2014, seek to improve consumer experience and outcomes by:

- introducing a supported decision-making model that gives all patients a voice in their assessment, treatment and recovery
- focusing on minimising the duration of compulsory treatment and ensuring that treatment is provided in the least restrictive and least intrusive manner possible
- increasing safeguards to protect patient rights and dignity including establishing a new mental health tribunal and a mental health complaints commissioner.

Although primarily concerned with individuals requiring compulsory treatment, the new legislation and the practice and culture changes being promoted as part of its implementation will be an important aspect of the delivery environment for mental health community support providers. MHCSS providers will need to be familiar with the provisions of the new legislation as they apply to clients they work with and the services they deliver.

MHCSS will support many people on community treatment orders as well as those who may require compulsory inpatient treatment and/or who may require compulsory inpatient treatment. These services need to be an integral part of care planning for people on treatment orders, even though primary (and legislative) responsibility for this lies with Area Mental Health Services. Providers of MHCSS will be expected to work closely with clinical services in these cases and to be alert to the particular issues that might arise for clients as a result of current or prior compulsory treatment.

A number of proposed elements of new legislation designed to promote supported decision making and family/carer engagement - including advance statements and nominated persons - may be particularly relevant to MHCSS as part of their longer term care and support for clients.

Up to date information about the legislative proposals can be found at: www.health.vic.gov.au/mentalhealth/mhactrereform/index.htm

Victorian Disability Act 2006

The *Disability Act 2006* (the Act) and the *Disability Regulations 2007* provides for a stronger whole-of-government, whole-of-community response to the rights and needs of people with a disability, and a framework for the provision of high quality services and supports for people with a disability

The Act sets out principles for people with a disability and for disability service providers. Disability service providers are the Department of Human Services and organisations that are registered under the Act to provide disability services. The Act requires that people with a disability be given information that explains their rights. For example, when a person starts to use a disability service, the disability service provider must give them information about the services to be provided and their rights under the Act.

Disability Discrimination Act 1992

Under the *Disability Discrimination Act 1992* (the Act) it is unlawful to discriminate against a person on the basis of their disability which includes physical, intellectual, psychiatric, sensory, neurological or learning disabilities; physical disfigurement; disorders, illness or diseases that affect thought processes, perceptions of reality, emotions or judgement, or results in disturbed behaviours; presence in body of organisms causing disease or illness (e.g. HIV virus). It covers employment; education; access to premises; accommodation; buying or selling land; activities of clubs; sport; administration of Commonwealth laws and programs; provision of goods; and services and facilities.

Victorian Charter of Human Rights and Responsibilities Act 2006

The *Victorian Charter of Human Rights and Responsibilities Act 2006* (the Charter) is a Victorian law that sets out the basic rights, freedoms and responsibilities of all people in Victoria. It is about the relationship between government and the people it serves. The Charter requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights in the Charter. Twenty fundamental human rights are protected in the Charter because the Victorian Parliament recognises that, as human beings, we have basic rights, including the right to be treated equally, to be safe from violence and abuse, to be part of a family and to have our privacy respected.

Other key legislation

Victorian Health Records Act 2002

The *Health Records Act 2001* (the Act) created a framework to protect the privacy of individuals' health information. It regulates the collection and handling of health information. The Act:

- gives individuals a legally enforceable right of access to health information about them that is contained in records held in Victoria by the private sector; and
- establishes Health Privacy Principles (HPPs) that will apply to health information collected and handled in Victoria by the Victorian public sector and the private sector.

The access regime and the HPPs are designed to protect privacy and promote patient autonomy, whilst also ensuring safe and effective service delivery, and the continued improvement of health services. The HPPs generally apply to all personal information collected in providing a health, mental health, disability, aged care or palliative care service; and all health information held by other organisations.

The Act applies to the health (including mental health), disability and aged care information handled by a wide range of public and private sector organisations.

Carers Recognition Act 2012

The *Carers Recognition Act 2012 (the Act)* formally recognises and values the role of carers and the importance of care relationships in the Victorian community. The Act includes a set of principles about the significance of care relationships, and specifies obligations for state government agencies, local councils, and other organisations that interact with people in care relationships.

The Act defines a carer as someone who provides care to another person, and includes carers under the age of 18. Carers can provide care for a person who: has a disability; has a mental illness; has an ongoing medical condition or is an older person with care needs. Care relationships also include those situations where a person is being cared for in a foster, kinship or permanent care arrangement.

The provisions in the Act build on and expand the *Victorian charter supporting people in care relationships* which came into effect in 2010. The Charter has been updated to reflect the new Act.

Occupational Health and Safety Act 2004

The *Occupational Health and Safety Act 2004 (the Act)* is the cornerstone of legislative and administrative measures to improve occupational health and safety in Victoria. The Act sets out the key principles, duties and rights in relation to occupational health and safety. The general nature of the duties imposed by the Act means that they cover a very wide variety of circumstances, do not readily date and provide considerable flexibility for a duty holder to determine what needs to be done to comply.

Equal Opportunity Act 2010

The objectives of the *Equal Opportunity Act 2010* are to encourage the identification and elimination of discrimination, sexual harassment and victimisation and their causes, and to promote and facilitate the progressive realisation of equality. It is against the law under the *Equal Opportunity Act 2010* to discriminate against a person based on their personal characteristics. It is also against the law to sexually harass someone or to victimise them for speaking up about their rights, making a complaint, helping someone else make a complaint or refusing to do something that would be contrary to the Equal Opportunity Act.

Victorian Information Privacy Act 2000

The *Information Privacy Act* (IPA) sets a standard for the protection of the privacy of personal information by the Victorian public sector, with the ten Information Privacy Principles (IPPs). The objects of the IPA are to:

- balance the public interest in the free flow of information with the public interest in respecting privacy and protecting personal information in the public sector; and
- promote the responsible and transparent handling of personal information in the public sector and promote awareness of these practices.

Under the IPA, State government organisations, local councils and private sector organisations acting as contracted service providers to the Victorian government are all bound to protect the privacy of people's personal information. "Personal information" means recorded information which can identify someone. The Privacy Commissioner administers the IPA.

The ten (IPPs) are the practical core of the Information Privacy Act. With limited exemptions, all Victorian government agencies, statutory bodies and local councils must comply with the IPPs. The principles cover collection; use and disclosure; data quality; data security; openness; access and correction; unique identifiers; anonymity; trans-border data flows; and sensitive information.

Competition and Consumer Act 2010

The Competition and Consumer Act 2010 (the Act) replaces the *Trade Practice Act 1979*. The purpose of the Act is to promote fair and efficient competition within markets and to provide protection to consumers. To achieve this, rights and obligations are conferred to businesses in their dealings with each other, and on their dealings with consumers.

Key Victorian Policies and Frameworks

Mental health related policies and frameworks

Victorian Framework for Recovery-Oriented Practice (Victorian Department of Health, 2011)

The *Framework for recovery-oriented practice* identifies the principles, capabilities, practices and leadership that should underpin the work of the Victorian specialist mental health workforce. The framework provides broad guidance to both individual practitioners and service leaders throughout the specialist mental health service system, specifically clinical and mental health community support services. It is intended to complement existing professional standards and competency frameworks.

Key quality and safety related policies and frameworks

National Standards for Mental Health Services 2010 (Department of Health and Ageing, Australian Government, 2010)

This document outlines a revised set of mental health service standards which can be applied to all mental health services, including government, non-government and private sectors across Australia.

National Safety Priorities in Mental Health: a national plan for reducing harm (Department of Health and Ageing, Australian Government, 2005)

This plan provides national direction for identifying, avoiding and reducing harm across all environment in which care of people with a mental illness is provided.

Victorian Quality Improvement Framework for HealthCare 2013-2022

The Commission for Hospital Improvement (CHI) is currently developing the *Victorian Quality Improvement Framework for Healthcare 2013-2022* (the framework). The framework will outline the vision, principles and goals for quality improvement in healthcare across Victoria. It is intended that the framework will serve the needs of health consumers, clinicians, administrators and policy makers and be applicable to all health settings to include public, private, not-for-profit, aged care, mental health, drug and alcohol and primary health sectors. It is expected that the framework will be completed by October 2013.

Key Victorian information management strategies and principles

Victorian Government ICT Strategy: 2013-2014 (Department of State Development, Business and Innovation 2013)

The Victorian Government ICT Strategy provides high-level direction on the design and use of information and technology to deliver better government services.

Other key policies and frameworks

Incident reporting

The service provider must agree to the Department of Health's procedures for Incident Reporting as a condition of funding. Information on this requirement can be found on <http://www.dhs.vic.gov.au/funded-agency-channel/about-service-agreement/incident-reporting>.

Cultural responsiveness framework: guidelines for Victorian Health Services 2010-2013 (Victorian Department of Health, 2009)

The framework encompasses a strategic and whole of organisation approach and is designed to be aligned with health services' strategic planning processes. It is based on the four key domains of quality and safety: organisational effectiveness; risk management; consumer participation; and effective workforce. The framework supports existing departmental policy, legislation, clinical governance and quality and safety frameworks.

Key National Policies and Frameworks

DisabilityCare Australia

DisabilityCare Australia is a groundbreaking reform to the way people with a disability, including those with a psychiatric disability, will access the supports they need. A cornerstone of DisabilityCare Australia is client-directed funding.

The Victorian Government is taking a lead role in driving the establishment of DisabilityCare Australia to ensure that eligible people with disability, their families and carers have the lifetime support they need.

The Victorian Government is working with DisabilityCare Australia to support the scheme's launch in Barwon.

The Victorian Government has committed \$2.5 billion per annum to the full rollout of DisabilityCare Australia in Victoria by mid 2019. It is anticipated the majority of MHCSS clients will transition to DisabilityCare Australia as it is rolled out across Victoria.

Preparing for the introduction of DisabilityCare Australia is a key driver for the reform of the current PDRSS program. The move to client-directed, flexible support packages, developed in partnership with clients and their carer(s), is a key step towards client-directed funding as envisaged by DisabilityCare Australia.

The strong focus on helping people and their carers to develop the knowledge and confidence they need to make choices about their support needs will also help people ready themselves for DisabilityCare Australia.

These reforms, combined with action to improve service quality, strengthen accountability for achieving client-directed outcomes and build workforce capability, will position Victoria's system to respond proactively to the opportunities DisabilityCare Australia will bring.

For more information on these reforms go to: <http://www.disabilitycareaustralia.gov.au/>

National Mental Health Policy (2008) (Department of Health and Ageing 2009)

The policy embeds a whole of government approach to mental health, first agreed to by the Council of Australian Governments in July 2006, within the National Mental Health Strategy. The policy represents a commitment by all health ministers and ministers with responsibility for mental health to the continual improvement of Australia's mental health system. It works towards ensuring that Australia has a mental health system that detects and intervenes early in illness, promotes recovery, and ensures that all Australians with a mental illness have access to effective and appropriate treatment and community supports to enable them to participate in the community fully.

COAG Roadmap for National Mental Health Reform 2012-2022 (Australian Government 2012)

The Roadmap outlines the direction governments will take over the next 10 years to deliver improved care and support for people with mental illness, their families, carers and communities. The Roadmap contains a preliminary set of indicators and targets to monitor progress by all governments.

Mental Health Statement of Rights and Responsibilities (2012), Australian Health Ministers Advisory Council (Commonwealth of Australia, 2012)

This statement seeks to ensure that consumers, carers, support persons, service providers and the community are aware of relevant rights and responsibilities and can be confident in exercising them.