

Victorian Multicultural Commission

Response to the Department of Health Engagement Paper on a new Mental Health and Wellbeing Act

5 August 2021

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The Victorian Multicultural Commission (VMC) welcomes the opportunity to respond to the Department of Health's Engagement Paper on a new Mental Health and Wellbeing Act.

The VMC is an independent statutory body that strengthens cultural diversity in Victoria through consultation, advocacy, celebration and promotion. It is one of the main conduits between Victoria's multicultural communities and government.

A key element of the recommendations of the Royal Commission into Victoria's Mental Health System is to ensure that the mental health and wellbeing system effectively embeds accessibility and responsiveness to the State's diverse communities, including Victoria's multicultural population.

Victoria is one of the most culturally diverse and successful multicultural societies in the world. A diversity, which as a consequence of our migration program, has been increasing, as highlighted by the following:

- The proportion of Victoria's population who were either born overseas or having at least one parent who was born overseas increased from 43.6% in 2006 to 49.1% in 2016. Greater Melbourne's corresponding demographics increased from 51.2% to 57.1%.
- The proportion of Victoria's population who spoke a language other than English at home increased from 20.4% in 2006 to 26% in 2016. Greater Melbourne's corresponding demographics increased from 26.3% to 32.6%. (ABS Census).

Our success in developing a relatively successful multicultural and socially cohesive society has been the product of a combination of factors including collaborative leadership at the political and community levels, and a range of targeted policies, programs and legislation, designed to facilitate inclusion, equality of opportunity and access, and a sense of belonging.

It has been widely acknowledged that the mental health system has been broken. This sadly has been the case with respect to the system's lack of responsiveness and accessibility to Victoria's multicultural communities.

The Royal Commission's findings acknowledge this as does last year's Productivity Commission's Inquiry Report on Mental Health (June 2020), which stated that *"the cultural responsiveness and inclusiveness of services need to be prioritised — there is substantial room for improvement."*

The issues

The multicultural sector, and the VMC, raised a range of issues and recommendations with the Royal Commission in relation to better enabling the mental health and wellbeing system to respond to the needs of Victoria's diverse population, including on:

1. the need for explicit recognition of our population's substantive and increasing multicultural and religious diversity.
2. the particular needs of:
 - a. new and emerging multicultural communities, particularly those of refugee and asylum seeker backgrounds and the impact of a range of traumas experienced, including in inter-generational terms.
 - b. international students and those on temporary working visas.
3. Sector capacity and capability:
 - a. workforce development and diversity to ensure that the workforce is reflective of the community it serves.
 - b. improving accountability including through funding agreements.
 - c. ensure the availability, capability and engagement of appropriately trained interpreters.
 - d. the need to recognise and include ethno-specific, faith and multicultural community organisations and service providers as part of the service delivery system and the consequential provision of appropriate resourcing.
4. Systems issues:
 - a. the need for the development of a diverse communities' mental health framework as recommended by the Royal Commission.
 - b. the need to improve data collection, analysis, research and service planning.
 - c. Representation on boards, decision making and advisory bodies across the whole mental health system being reflective of the community's demographics, noting the importance of an intersectional lens.
5. Education and awareness
 - a. improving health literacy and addressing stigma.
 - b. the need to both address discrimination and racism as well as the system being aware of and responsive to the impact that racism and discrimination has on the mental health and wellbeing of individuals, families and communities.

The Royal Commission's report and recommendations have directly or indirectly acknowledged these issues and areas of improvement, including through recommendation 34. To illustrate, recommendation 34.1 states that the Victorian Government "*ensure the active engagement of Victoria's diverse communities throughout the process of planning, implementing and managing the reformed mental health and wellbeing system.*"

In broad terms, the proposals outlined in the Engagement Paper broadly meet the Royal Commission's recommendations and the VMC welcomes much of what is outlined either for the new Act or in other regulatory or policy commitments. Our responses to the questions set out in the Engagement Paper are underpinned by the above issues.


We also welcome the opportunity to collaborate with the Department of Health on the design and implementation of the Report and the Act as we are uniquely positioned as per the Multicultural Victoria Act to support the Department and the Commission in the execution.

If you would like to discuss any aspect of this submission, please do not hesitate to reach out either to myself at vivienne.nguyen@vmc.vic.gov.au or Hakan Akyol at hakan.akyol@vmc.vic.gov.au.

Yours sincerely



Vivienne Nguyen AM
Chairperson



VMC's Responses to the questions posed by the *Mental Health and Wellbeing Act: update and engagement paper (June 2021)*

Objectives & Principles of the new Act

Question 1

Do you think the proposals meet the Royal Commission's recommendations about the objectives and principles of the new Act? If not, why?

Question 2

How do you think the proposals about objectives and principles could be improved?


VMC Response

The proposals meet the Royal Commission's recommendations about the objectives and principles of the new Act in broad terms and the VMC welcomes the proposal:

1. for the Mental Health and Wellbeing Commission being able to issue statutory guidelines on how the principles should be interpreted and applied in relation to specific actions and decisions under the new Act. Such guidelines should set minimum cultural diversity and inclusion benchmarks that covers, for example, data collation, workforce diversity and board, advisory and decision-making bodies that are reflective of the community.
2. that requires certain bodies (including new entities and service providers) to include in annual reports information about how the principles are being embedded and actions that are being taken to progress the objectives of the new Act. However, every effort must be made to ensure that such reporting doesn't become a "tick-the-box" or "having regard for" but that the reporting is evidence- and outcome-based and capturing intersectional diversity.
3. to establish a new ground of complaint to the Mental Health and Wellbeing Commission when it is believed a service provider or decision-maker has not made all reasonable efforts to comply with the principles.

Improvements and Issues for consideration:

4. There needs to be a more explicit recognition of our population's substantive multicultural diversity. Not doing so, or passive reference, risks repeating the mistakes of the past that contributed over time towards marginalisation, the creation of barriers and the inaccessibility and under-utilisation of much needed services. The cost of such risks far outweighs the upfront planning and execution.
5. The objectives and principles capture the need for the system ensuring that "the lived experience of people living with mental illness or psychological distress, carers, families and supporters is at the centre of practice change and system design". The objectives and principles need to more explicitly reference and strengthen within the objectives that all key stakeholders need to be engaged, such as communities and the mental health workforce in the development and implementation of the new Act. This is particularly pertinent with respect to Victoria's diverse multicultural and faith communities given the previously cited issues and demographics. The Royal Commission's recommendation 34.1 explicitly addresses this as follows "ensure the active engagement of Victoria's diverse communities throughout the process of planning, implementing and managing the reformed mental health and wellbeing system."
6. That throughout the mental health system, representation on decision making and advisory bodies as well as across all levels of the workforce be reflective of the community's demographics, noting the importance of an intersectional lens. Appropriate representation on decision making and



advisory bodies is fundamental in preventing misguided cultural assumptions and biases, as well as invisibility, of multicultural needs in mental health.

7. The need to explicitly include a guiding principle for mental health and wellbeing services to use ongoing research, evaluation and innovation to respond to community needs (as per Royal Commission's Guiding principle 7, volume 1, page 76).
8. As noted earlier, the Royal Commission has provided clear direction that to 'have regard' to the principles is not sufficient to embed them in practice. The Royal Commission states it is important that action should be taken to progress Act objectives and that services and decision-makers operating under the new Act 'make all reasonable efforts' to comply with the principles. A measurement framework should be considered by the Mental Health and Wellbeing Commission measure and monitor the utilisation of "making all reasonable efforts" and ensure that it isn't misused.
9. The importance of a human rights-based approach that ensures that everyone has the same rights to culturally safe and responsive, timely and effective mental health support including people from migrant and refugee backgrounds.
10. The need to ensure that international students and those on temporary working visas have access to mental health supports. They are a cohort, who have often slipped through the cracks. Also noting that: they contribute significantly to our social, cultural and economic development; a proportion of whom become permanent residents and citizens; and providing early intervention support at time of need is of mutual benefit.
11. Include "visa status" as a characteristic of diversity in the list of diversity-related needs and experiences as illustrated below:

recognise and respond to the diverse backgrounds and needs and of the people who use them, including those related to age, disability, culture, neurodiversity, language, communication, religion, race, gender, gender identity, sexual orientation, visa status or other matters
12. The need for all mental health services needing to address and eliminate racism, discrimination, cultural assumptions and biases.
13. Accessing an interpreter must be recognised as a right.
14. Recognise the range of traumatic experiences that may affect mental health and wellbeing as a general principle.

Non-legal advocacy, supported decision making and information sharing

Non-legal Advocacy


Question 3 Do you think the proposals meet the Royal Commission's recommendations about non-legal advocacy? If not, why?

Question 4: How do you think the proposals about non-legal advocacy could be improved?

VMC Response

With respect to people from multicultural backgrounds the proposals should meet the Royal Commission's recommendations, given that:

15. services will be required to comply with the principle of ensuring the diversity-related needs and rights of people receiving services, for example, as to language and culture
16. guidelines will be issued by the Mental Health and Wellbeing Commission
17. in their annual reports, service providers will be required to include information about their actions to embed the principles in practice
18. the new Act will create an avenue of complaint about non-compliance with the principles



It would be important for the guidelines issued by the Mental Health and Wellbeing Commission to cover:

19. the right to an interpreter to ensure that the individual, carers and families are informed to enable informed consent as well as being aware of their rights.
20. people should be able to have any support person they choose when they are involved in the mental health system, such as extended family members, community elders or faith leaders.

Supported decision making

Question 5 *Do you think the proposals meet the Royal Commission's recommendations about supported decision making? If not, why?*

Question 6: *How do you think the proposals about supported decision making could be improved?*

VMC Response

The proposals should meet the Royal Commission's recommendations, given that implementation will be subject to:

21. services being required to comply with the principle that the diversity-related needs and rights of people receiving services must be ensured; and
22. the strengthened oversight of supported decision-making practices through various mechanisms, including the Mental Health and Wellbeing Commission.

Information collection, use and sharing

Question 7 *Do you think the proposals meet the Royal Commission's recommendations about information collection, use and sharing? If not, why?*

Question 8 *How do you think the proposals about information collection, use and sharing could be improved?*

VMC Response

The proposals meet the Royal Commission's recommendations and other guidance in its report about information collection, use and sharing; particularly given the desire, as referenced in the Royal Commission Report and the Engagement Paper, *for a much more open, collaborative and seamless culture of information collection, use and sharing. This will lead to better service delivery and improved consumer outcomes and experiences.*"

The proposed principles that will guide the information collection and use under the new Act are welcome, particularly as they emphasise the *"rights, dignity and autonomy of consumers and empowers them to exercise those rights."*

Improvements and issues for consideration

23. ensure that the range of purposes for information collection, use and sharing should be explicitly described, as they are in the Mental Health Act 2014.
24. that the information provided be in the person's preferred language.
25. information collection could be undertaken in conjunction with research – where there is a paucity of data that is crucial in driving our understanding of cultural needs and barriers



Treatment, Care and Support

Compulsory Treatment and Assessment

Question 9: Do you think the proposals meet the Royal Commission's recommendations about reducing the use and negative impacts of compulsory assessment and treatment? If not, why?

Question 10: How do you think the proposals about compulsory treatment and assessment could be improved?

Seclusion & Restraint

Question 11: Do you think the proposals meet the Royal Commission's recommendations about reducing the use and negative impacts of seclusion and restraint, and regulation of chemical restraint? If not, why?

Question 12: How do you think the proposals about seclusion and restraint could be improved?

VMC Response

The measures outlined in the Engagement Paper are welcome and would seem to meet the Royal Commission's recommendations, in particular:

- the redesigned system will move from a crisis-driven model to a system built around community-based services.
- enhancing voluntary methods of treatment, care and support to meet people's needs and preferences.
- introducing a more diverse mix of treatment, care and support so as to provide greater access to therapeutic interventions and recovery-centred responses.
- increasing consumer leadership and participation in all activities to reduce compulsory treatment.
- supporting the design and implementation of local programs, informed by data, to reduce compulsory treatment.
- workforce training on non-coercive options for treatment that is underpinned by human rights, safety and supported decision-making principles.
- using modern, human rights-focused principles and establishing stronger system oversight over publicly funded mental health and wellbeing services.
- the objectives and principles of the new Act will set clear expectations that compulsory treatment is to be used only as a last resort.
- that there will be principles relating specifically to the use of compulsory treatment, requiring decision-makers to consider the impact for people who may have experienced trauma (p 25).
- the Mental Health and Wellbeing Commission will monitor the use of compulsory assessment and treatment – monitoring should be in accordance with the principle of having regard for the diversity of the community, so that for example, the Mental Health and Wellbeing Commission will enquire into the reasons for certain groups (including people from culturally diverse communities and Aboriginal people) being over-represented on compulsory treatment orders (see Royal Commission report, volume 4, 32.2.1).
- services will be subject to formal reporting requirements that would mandate that they collect and publish data pertinent to the accessibility and equity of service delivery.

Improvements and issues for consideration

26. access to interpreters as a right, and a requirement for service providers whenever compulsory treatment, restraint and seclusion are used
27. that people must have access to family members, non-legal advocates, and support people when mental health services use compulsory treatments, restraint and seclusion
28. that the multicultural sector and communities be actively engaged in developing the plan to reduce the use of restraint and seclusion in mental health services.



Governance and oversight

Question 13 *Do you think the proposals meet the Royal Commission's recommendations about governance and oversight? If not, why?*

Question 14

How do you think the proposals about governance and oversight could be improved?

VMC Response

The proposals meet the Royal Commission's recommendations about governance and oversight and the VMC welcomes the new governance infrastructure. The following improvements are recommended:

Improvements and issues for consideration

29. All decision-making and advisory bodies in the mental health system be reflective of Victoria's cultural, religious and linguistic diversity.
30. People from migrant and refugee backgrounds with lived experience, ethno-specific and multicultural organisations, community leaders and advocates be engaged in the design, delivery and evaluation of mental health services.
31. Multicultural and ethno-specific organisations be seen as part of the service system including in the provision of secondary consultations, social support, support for people outside of clinical settings.
32. Develop the diversity and capability of the mental health workforce to deliver culturally safe and responsive care.
33. Given the importance of the Mental Health and Wellbeing Commission in leadership, complaints handling, system-wide oversight, monitoring and improvement, the Act needs to clearly specify its roles and powers to ensure clarity and ability to accomplish its tasks.
34. The Mental Health and Wellbeing Commission's ability to issue statutory guidelines on how the objectives and principles are actioned (not just having regard for) is critically important with respect to:
 - the systems responsiveness to diversity and the ability for such statutory guidelines being able to specify, for example, data collation, workforce diversity and capabilities, board representation, community engagement and funding agreements.
 - human rights, persons deprived of their liberty, compulsory assessment and treatment, seclusion, and restraint.
35. That the Mental Health and Wellbeing Commission require service providers to collect consistent data about the cultural and language backgrounds of service users, including their country of birth, language spoken at home, ancestry/ethnicity, religion, length of time in Australia and need for and use of an interpreter. That such data be reported on as part of the service providers' annual report, including where appropriate a comparative analysis of how service utilisation varies from the demographics of the organisation's service area.
36. That regional mental health and wellbeing boards to be demographically representative of their respective catchment areas. Noting that any recruitment process has clear selection criteria and facilitates diverse expressions of interest.
37. The need for inclusion of multicultural representation on specific initiatives and programs recommended by the Royal Commission such as the Collaborative Centre, the Suicide Prevention Centre as well as within existing entities such as the Mental Health Tribunal.
38. Recruitment to the Department's Mental Health and Wellbeing Unit needing also to be inclusive – position descriptions will need to reference the importance of diversity – having external representatives on selection / recruitment panels is highly recommended.