

1 August 2021

Via email: mhwa@health.vic.gov.au

To whom it may concern,

Re: Mental Health and Wellbeing Act

Thank you for the opportunity to contribute to the Mental Health and Wellbeing Act update and engagement.

The Victorian Pride Lobby is a community based advocacy group that works towards equality, social justice and advancing human rights for lesbian, gay, queer, bisexual and same-gender attracted Victorians.

We do not speak in the place of trans and gender diverse, intersex and asexual community members, but rather work constructively, cooperatively and respectfully with transgender, intersex, asexual and other community organisations to achieve social change for the LGBTIQ+ community.

Our submission provides feedback on particular policy issues to be addressed in the proposed new Mental Health and Wellbeing Act, including:

- defining mental illness and updating mental health principles in a way that does not stigmatise but rather recognises the needs of LGBTIQ+ people;
- updating provisions on disclosure of health information and search powers to protect the privacy of LGBTIQ+ people; and
- including LGBTIQ+ representation on the proposed Mental Health and Wellbeing Commission and Regional Mental Health and Wellbeing Boards.

We welcome any opportunity to work together to ensure that the new Mental Health and Wellbeing Act responds to the needs of LGBTIQ+ Victorians.

Yours sincerely,

Nevena Spirovska and Evie Potter
Co-Convenors, Victorian Pride Lobby

Background

The Royal Commission into Victoria's Mental Health System has recommended that the Victorian Government replace the current *Mental Health Act 2014* with a new Mental Health and Wellbeing Act by mid-2022.

Our submission provides feedback on particular policy issues to be addressed in the proposed new Act.

Particular policy issues

Defining mental illness

It is important that the new Act contains the stipulations in the definition of "mental illness" in the current Act that preclude sexual preference, gender identity, sexual orientation or sexual promiscuity.¹ As the then Minister, David Davis, said at the time:

*Transgender and gender-diverse people's mental health, wellbeing and physical health are markedly worse than those of the general population and other subpopulations under the GLBTI umbrella, such as gay men and lesbians. Importantly... **research does not indicate that poorer mental or physical health or higher suicidality is inherent to being transgender or gender diverse. Rather, poorer mental health and wellbeing are caused by stigma, social exclusion, discrimination, bullying, rejection by family and friends and the difficulties experiences in transitioning, if required, in a manner that is both timely and appropriate for the individual.***²

This is also consistent with provisions in the *Change or Suppression (Conversion) Practices Prohibition Act 2021* that stipulate that a person's sexual orientation or gender identity does not constitute an illness.³

The mental health principles

The engagement paper proposes updating the language surrounding the mental health principles regarding individual needs⁴ from "gender, sexuality" to "gender, gender identity, sexual orientation". This is welcome and reflects the wording in the *Equal Opportunity Act 2010*. However, this provision should also include "sex characteristics" so as to be inclusive of the individual needs people with an intersex variation and to ensure that those needs are recognised and responded to.

¹ *Mental Health Act 2014* s 4(2).

² Victoria, *Parliamentary Debates*, Legislative Council, 25 March 2014, 858 (David Davis MLC) (emphasis added).

³ *Change or Suppression (Conversion) Practices Prohibition Act 2021* s 3(2)(c).

⁴ *Mental Health Act 2014* s 11(1)(g).

The principle regarding the rights, dignity and autonomy of people living with mental illness,⁵ and explicit reference should be made to the *Charter of Human Rights and Responsibilities Act*.

Disclosure of health information

The engagement paper includes as a principle "the important role of families, carers and supporters and their need to access appropriate information and the importance of information sharing to promote and maintain their physical, emotional, cultural and psychological safety."

The current Act enables sharing of health information with parents if the person is under 16, without regard to their views and preferences.⁶ This should either be removed or brought in line with the *Gillick* decision. In particular, if the child has the capacity to give informed consent, health information should only be shared with parents if the child has given informed consent to this. This would be consistent with the capacity and informed consent provisions regarding treatment,⁷ and also consistent with the principles in the engagement paper.

Search powers

If the search provisions in the current Act are maintained,⁸ they should enable the person to nominate the gender of the person who will conduct the search rather than the current requirement that they be of the same sex as the person searched. Equality Australia has proposed the same in relation to Australian Capital Territory laws.⁹

Mental Health and Wellbeing Commission and Mental Health and Wellbeing Boards

Consideration should be given to LGBTIQ+ representation on the proposed Mental Health and Wellbeing Commission and the Regional Mental Health and Wellbeing Boards. Equality Australia has proposed the same for the Australian Capital Territory's Mental Health Advisory Council.¹⁰

The Royal Commission into Victoria's Mental Health System found that "services must have a deep understanding of the specific needs of their local communities. These include... LGBTIQ+ communities."¹¹ LGBTIQ+ representation on such bodies would equip them with a deep understanding of the specific needs of the LGBTIQ+ communities.

⁵ *Mental Health Act 2014* s 11(1)(e).

⁶ *Mental Health Act 2014* s 246(1)(j).

⁷ *Mental Health Act 2014* ss 68, 69.

⁸ *Mental Health Act 2014* s 355(6).

⁹ Equality Australia, *ACT LGBTIQ+ Legal Audit: Reforms for an Inclusive ACT* (2019) 22.

¹⁰ Equality Australia, *ACT LGBTIQ+ Legal Audit: Reforms for an Inclusive ACT* (2019) 25.

¹¹ Victoria, Royal Commission into Victoria's Mental Health System, *Final Report* (2021) vol 1, 322.