January 2017

REVIEW OF THE QUEENSLAND MENTAL HEALTH COMMISSION ACT 2013

Issues raised by stakeholders

Introduction

The *Queensland Mental Health Commission Act 2013* (the Act) Section 56 requires the Minister to review its effectiveness as soon as practicable after the end of three years after commencement, that is, after 30 June 2016.

This paper provides a summary of those matters that have been brought to the attention of the Commission, either formally or informally, and are relevant to the review of the Act. Its purpose is to assure stakeholders that matters previously raised will be brought to the attention of the review for consideration.

Following the Public Service Commission's independent review of the effectiveness of the Commission, the Minister for Health determined that the scope and function of the Commission, as well as the role of the Mental Health Commissioner, are not within the scope of this review which is to focus on those matters which are more technical in nature.

Stakeholder suggestions for change

These matters have been raised formally through the Commission's annual surveys or the Public Service Commission's review of the Commission's effectiveness and informally through many engagement channels.

Views on changes are not unanimous and not all are within scope of the review.

Changes in functions

A number of comments to and about the Commission have proposed significant changes in functions. Some are clearly outside the scope of this review. They include:

- giving the Commission greater control of funding of mental health services
- including complaints management or advocacy for individuals within the Commission's mandate
- policy oversight in relation to clinical matters
- holding government departments to account for the *Queensland Mental Health, Drug and Alcohol Strategic Plan 2014–2019* and the associated action plans.

A consumer commissioner

There have been several calls for a strong consumer focus in the Commissioner's role in a range of ways. Other than requiring the Commissioner to also have lived experience of mental illness, legislation could provide for an additional commissioner or commissioners who are consumers. Legislation would need to define the criteria for 'consumer.' Alternatively, a senior position could be created in the Commission without legislation. Either would require appropriate resources.

The National Mental Health Commission has a number of Commissioners, including lived experience roles. These positions are not created by legislation.

New South Wales legislation provides for a number of Deputy Commissioners appointed by the Governor. It requires that the Commissioner or at least one Deputy Commissioner must be a person who has or has had a mental illness.

An added challenge is that if a commissioner with lived experience of mental illness is appointed, the alcohol and other drugs sector and the suicide prevention sector may feel marginalised.

Independence

People comment on the Commission's independence from Government and its independence from the Health portfolio.

The Government of the day, rather than the legislation, determines which portfolio the Commission is allocated to.

Independence from Government is established in a number of ways by legislation, including:

- the specific provisions in relation to the chief executive (i.e. Commissioner): under Section 18 of the Act, the Commissioner holds office for the term of three years and is appointed by the Governor in Council on the recommendation of the Minister for Health. More independent offices require consultation with a Parliamentary Committee and may be for a longer period (e.g. Health Ombudsman)
- requiring the Commissioner to report to a Parliamentary Committee rather than a single Minister, noting however that all public sector appointees must be attached to one portfolio for accountability purposes
- whether or not the Minister may direct the office holder: Section 13 provides for this and requires that any such direction be reported in the agency's annual report.

Advocacy

The Act does not include specific mention of advocacy, however the Commission is charged with 'promoting' the best interests of people with mental health and substance misuse issues and the families, carers and support person (Section 4 (2) (a) (ii)).

This can be interpreted to include advocacy or a change to the legislation could make specific mention of systemic advocacy.

Mental health promotion, awareness and early intervention

Some stakeholders would like the Commission to have a stronger role in promotion, prevention and early intervention. The current Act makes several references to a role of the Commission in this regard. Legislation is not generally used to guarantee resources are available.

This includes clarification of the roles of the Commission and the proposed Health Promotion Commission.

Council appointments

Concerns have been expressed about the length of time in appointments of members of the Mental Health and Drug Advisory Council associated with delays in progressing recommendations to the Governor in Council. The alternative is to have members appointed directly by the Commissioner as they are under the *Family and Child Commission Act 2014*. This however detracts from the prestige and credibility associated with an appointment by the Governor in Council.

Consumer/lived experience terminology

Use of the term 'consumer' is generally confined to people with lived experience of mental illness and those impacted by suicide or alcohol and other drugs are more comfortable being described as people with lived experience, clients or service users. Increasingly, but not unanimously, the mental health sector is also rejecting the term 'consumer'. A change in terminology in the Act would require consensus among relevant stakeholders.

Alcohol and other drug use

Reference to people living with problematic alcohol and other drug use is described variously throughout the Act as 'people with substance misuse issues or people who misuse substances'. The title of the Mental Health and Drug Advisory Council makes no reference to alcohol.

Reference is also made from time to time in the Act to 'mental health **and** substance misuse' and at other times to 'mental health **or** substance misuse'. The Commission has interpreted this to be inclusive of people with problematic alcohol and other drug use, whether or not a mental illness is also present.

Furthermore, neither the title of the Act nor of the Commission includes any reference to alcohol or other drugs. This has required the Commission to continually reassert the importance of the dual focus.

Suicide prevention

There is no mention of suicide prevention in the Act, however it could be considered to be included within the broader mental health responsibilities.

Clarification and streamlining in the Act

This section includes an overview of a number of minor issues that may assist in clarifying and streamlining the Act.

Clarity of role

Concerns were expressed about clarity of the Commission's role. This may also be addressed by a focused communication strategy following the current review and common messages for all Government agencies, particularly those in the Health portfolio.

Defining the Commission

Section 14 defines the membership of the Commission as the Commissioner and other staff. It is not usual that a statutory body would be defined as comprising staff of the body. The Public Service Commission for example includes the Chief Executive of the agency and a number of other nominated persons. The *Family and Child Commission Act 2014* makes no comment on membership of the Commission per se.

Timelines

Section 30 of the Act requires that the Commissioner must give an ordinary report to the Minister upon its completion and that the Minister must table the report in the Legislative Assembly 'as soon as practicable after receiving it'.

The preparation of special and ordinary reports by the Commissioner provides a powerful avenue for demonstrating ability to perform a strong advocacy role in relation to critical systemic issues identified by the Commissioner.

The *Guardianship and Administration Act 2000* (Chapter 9, Part 1, Section, 209A (4)) provides a relevant point of reference on this issue. It requires that reports prepared by the Public Advocate must be tabled by the Minister five sitting days after the Minister receives the report. Section 169 of the *Health Ombudsman Act 2013* requires the Minister to table a report within 14 days after receiving it.

Council advice

Section 38 of the Act stipulates that the Council's functions are to provide advice to the Commission, or at the request of the Commission, including in relation to the functions of the Commission. This may be clearer if the advice was to Commissioner, or at the request of the Commissioner.

Ordinary reports

The Act (s29) includes specific provisions around the preparation of ordinary reports, including provision to make recommendations for tabling in Parliament. The Commission has interpreted this to mean that all reports with recommendations are defined as ordinary reports but information papers, including those providing options for reform, do not come within this definition.

Further information

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Appendix 1

The functions of the Queensland Mental Health Commission are set out in section 11 of the *Queensland Mental Health Commission Act 2013*.

1. The main functions of the commission are:
    a. to prepare a whole-of-government strategic plan;
    b. to monitor and report to the Minister on implementation of the whole-of-government strategic plan;
    c. to review the whole-of-government strategic plan;
    d. to review, evaluate, report and advise on –
        i. the mental health and substance misuse system; and
        ii. other issues affecting relevant persons; and
        iii. issues affecting community mental health and substance misuse;
    e. to promote and facilitate the sharing of knowledge and ideas about mental health and substance misuse issues;
    f. to undertake and commission research in relation to mental health and substance misuse issues;
    g. to support and promote strategies that –
        i. prevent mental illness and substance misuse; and
        ii. facilitate early intervention for mental illness and substance abuse;
    h. to support and promote the general health and wellbeing of people with a mental illness and people who misuse substances, and their families, carers and support persons;
    i. to support and promote social inclusion and recovery of people with a mental illness or who misuse substances;
    j. to promote awareness and understanding about mental health and substance misuse issues, including for the purpose of reducing stigma and discrimination;
    k. to take other action the commission considers appropriate to address the needs of relevant persons.
2. In exercising its functions under the Act, the commission must:
    a. focus on systemic mental health and substance misuse issues; and
    b. take into account comorbid issues including disability, chronic disease and homelessness; and
    c. take into account issues for people with mental health and substance misuse issues in the criminal justice system; and
    d. engage and consult with –
        i. people with mental health or substance misuse issues, and their families, carers and support persons; and
        ii. hospital and Health Boards under the *Hospital and Health Boards Act 2011*; and
    e. take into account the particular views, needs and vulnerabilities of different sections of the Queensland community including –
        i. Aboriginal and Torres Strait Islander communities; and
        ii. culturally and linguistically diverse communities; and
        iii. regional and remote communities; and
        iv. other groups at risk of marginalisation and discrimination; and
    f. take into account contemporary evidence and relevant policy and strategic frameworks.