

**Review of the effectiveness of the  
*Queensland Mental Health  
Commission Act 2013*, pursuant to  
section 56 of the *Queensland Mental  
Health Commission Act 2013***

**March 2019**

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## Foreword

The Queensland Mental Health Commission (QMHC) was established on 1 July 2013 under the *Queensland Mental Health Commission Act 2013* (the Act), to drive ongoing reform towards an integrated, evidence-based, recovery-oriented mental health and substance misuse system.

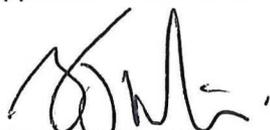
The Act requires the Minister to commission two separate reviews. Section 55 of the Act provides for an independent review of the performance by the Commission of its functions. This review was undertaken by the Public Service Commission, which submitted a report to the previous Minister for Health and Minister for Ambulance Services in 2016. The review found the Commission was performing well, and also identified some priority areas to focus on going forward.

Section 56 of the Act requires the Minister to review the effectiveness of the Act as soon as practicable after the end of three years after its commencement. This report outlines the findings of the Act review and will be tabled in the Legislative Assembly as required under the Act.

The review of the Act was informed by consultation via a survey with a range of government and non-government stakeholders of the QMHC.

I would like to thank everyone who has provided their feedback to the review of the Act. Your valuable contribution to ensuring the legislation is effective is very much appreciated.

While the findings of the review conclude that the Act is functioning well, this report includes two recommendations for minor legislative amendments to the Act to clarify employment arrangements at the Commission, and provide for a longer term of appointment for the Commissioner.



**Steven Miles MP**

**Minister for Health  
and Minister for Ambulance Services**

## Abbreviations

PSC	Public Service Commission
QMHC	Queensland Mental Health Commission
QMHDAC	Queensland Mental Health and Drug Advisory Council
the Act	<i>Queensland Mental Health Commission Act 2013</i>
the Commissioner	Queensland Mental Health Commissioner
Minister	Minister for Health and Minister for Ambulance Services

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## Executive Summary

Sections 55 and 56 of the *Queensland Mental Health Commission Act 2013* (the Act) require the Minister for Health and Minister for Ambulance Services (the Minister) to undertake two separate reviews; a review of the performance by the QMHC of its legislated functions, and a review of the effectiveness of the Act.

This report presents the findings and recommendations from the review of the Act, which must be undertaken as soon as practicable after the end of three years after its commencement.

The Act review did not consider:

- matters addressed by the independent QMHC effectiveness review conducted under section 55 of the Act in June 2016;
- any changes to the role and functions of the Commissioner or the structure of the Commission; or
- any resourcing issues relating to the Commission.

### Review Process

A survey was sent to 36 stakeholders including Queensland government departments and not for profit organisations to inform this review. A total of 13 submissions were received.

The review of the Act was overseen by a steering committee including the former Queensland Mental Health Commissioner, and representatives from:

- Queensland Health
- the Queensland Mental Health and Drug Advisory Council (QMHDAC)
- Mental Health, Alcohol and Other Drugs Branch in the Department of Health; and
- the Department of the Premier and Cabinet.

The current Mental Health Commissioner, Mr Ivan Frkovic, was consulted in relation to the recommendations outlined in this report.

### Findings

Overall, this review found that the Act is able to effectively support the functions and objects of the Commission as established under the Act. Two recommendations regarding potential legislative amendments are included in this report, intended to address minor issues in relation to the Act.

Some of the issues raised during the review can be addressed through administrative processes to enhance the functionality and effectiveness of the Act.

There were a number of issues raised in stakeholder responses which were outside the scope of this review, and therefore were not examined, nor have any recommendations made in relation to them. These included:

- changing the title of the Act and the Commission to include reference to drugs and alcohol misuse;

- including reference to both monitoring and implementing the strategic plan. Implementation is the responsibility of the relevant government agencies identified in the plan, rather than the Commission itself;
- including the term 'advocacy' in the Act. It is considered that there is no need for this as the Act contains reference to 'promoting the interests of....' which has a similar meaning;
- replacing the words 'encourages integration' with 'promote integration' was not considered necessary;
- including reference to suicide prevention in the Act was not considered necessary as the Commission has done, and will continue to develop policy in this important area.

### ***Arrangements for employing staff***

During this review of the Act, the Department of Health identified that a technical amendment may be required to section 24(1) which provides that the Commission may employ staff. However, section 14 provides that the Commission consists of the Commissioner and the Commission's staff. Taken together, these provisions can be interpreted to mean the Commission employs itself.

### **Recommendation 1**

- Consult with the Public Service Commission to determine the best way to ensure sections 14 and 24 work together to avoid the anomaly identified.

### ***Commissioner's term of office***

Under the Act, the Mental Health Commissioner is appointed under section 18 for a term of three years (and no more and no less). Stakeholder responses suggested extending the term of the Commissioner under the Act to be similar to the Chief Executive of the Queensland Public Service Commission. The New South Wales Mental Health Commissioner, and the Victorian Mental Health Commissioner are appointed for terms up to five years under their enabling legislation as statutory office holders. The Victorian Commissioner can be reappointed, and the New South Wales Commissioner cannot be appointed for more than two successive terms.

The appointment of other Mental Health Commissioners: Western Australia and South Australia, and the National Mental Health Commission are made under the equivalent of Queensland's Public Service Act, and are considered statutory office holders rather than appointments to a Government body.

Other statutory office holders in Queensland include the Family and Child Commission's Commissioners who are appointed for a term of up to three years; the Public Advocate who is appointed for four years, and the Health Ombudsman who is appointed for three years. However, the most directly comparable Commissioner appointment terms for the purposes of this review are those of the Mental Health Commissioners in New South Wales and Victoria given their roles are similar.

This proposal is supported, as it provides greater continuity in the role of Mental Health Commissioner and more flexibility in relation to the duration of the Commissioner's term of appointment.

Any reappointment/extension of the current Mental Health Commissioner will need to be made in accordance with the Significant Appointment process outlined in the Cabinet Handbook.

## **Recommendation 2**

- Consider amending section 18 to provide that the term of office of the Commissioner may be for a period of up to 5 years. This would enable a Commissioner to be appointed for a lesser term if preferred.

# Review of the *Queensland Mental Health Commission Act 2013*

## Background to the review

Sections 55 and 56 of the *Queensland Mental Health Commission Act 2013* (the Act) require the Minister for Health and Minister for Ambulance Services to undertake two separate reviews.

Under section 55(1) of the Act, the Minister is required to arrange an independent review of the performance by the QMHC of its functions. The section 55 review was conducted by the Public Service Commission (PSC), and a report submitted to the previous Minister in June 2016. The report has since been published<sup>1</sup>, and the Commission's response to the review is published on the Commission's website.<sup>2</sup>

Under section 56 of the Act, the Minister must also review the effectiveness of the Act as soon as practicable after the end of three years after the commencement of the Act, (after 30 June 2016).

As soon as practicable after completing the Act review, the Minister must table a report about its outcome in the Legislative Assembly.

This report outlines the Act review methodology, findings, and recommendations.

## Terms of reference and review methodology

### Steering Committee

At its commencement, the review process was overseen by a steering committee with the following members:

- Mr Mark Tuohy, Director, Office of Health Statutory Agencies (Chair)
- Dr Lesley van Schoubroeck, former Queensland Mental Health Commissioner
- Mr Kingsley Bedwell, former Member, Queensland Mental Health and Drug Advisory Council
- Associate Professor John Allan, Executive Director, Mental Health, Alcohol and Other Drugs Branch, Queensland Health
- Ms Kyla Hayden, Senior Director, Social Policy, Department of the Premier and Cabinet

Dr van Schoubroeck's term as Queensland Mental Health Commissioner concluded on 30 June 2017 and as such she was no longer involved in the review from that time.

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<sup>1</sup> Queensland Mental Health Commission Effectiveness Review:  
[https://www.health.qld.gov.au/\\_\\_data/assets/pdf\\_file/0027/627408/review-of-the-qmhc-june2016.pdf](https://www.health.qld.gov.au/__data/assets/pdf_file/0027/627408/review-of-the-qmhc-june2016.pdf)

<sup>2</sup> Commission's response to the review of the Commission: <https://www.qmhc.qld.gov.au/about-us/our-performance/qmhc-effectiveness-review/>

## Stakeholder survey

As part of the review of the Act, Queensland Health sent a survey (Appendix A) to 36 stakeholders including Queensland government departments and not for profit organisations. A full list of survey recipients is provided at Appendix B.

A total of 13 submissions were received in response to the survey, all from Queensland Government Departments with responsibility for implementation of key areas of the QMHC's whole of government *Queensland Mental Health, Drug and Alcohol Strategic Plan 2014-2019* (strategic plan).

## The Mental Health Commission Act 2013

The Act provides for the establishment of the QMHC which commenced on 1 July 2013 as a statutory body.

The purpose of the QMHC is to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system.

Under the Act, the functions of the QMHC are to:

- Develop a whole of government strategic plan by working together with consumers, families, carers, government and non-government stakeholders; and facilitate, support and report on the QMHC's work and the work of other government departments and organisations responsible for implementation of the Strategic Plan.
- Carry out, support and contribute to reviews, research and evaluation.
- Facilitate and promote awareness, prevention and early intervention strategies; and
- Establish and support mechanisms to improve system governance, such as the QMHDAC, and promoting consumer, family and carer engagement and leadership.

The focus of the QMHC is on increasing knowledge, understanding and information sharing through partnerships, public reports, and community awareness activities.

The Queensland Mental Health and Drug Advisory Council (QMHDAC) provides policy advice on mental health and substance misuse issues to the QMHC and makes recommendations on how the QMHC can fulfil its functions.

The following section outlines stakeholder feedback received in relation to each Part of the Act, and related findings and recommendations.

## Part 1 Preliminary

### **Title of the Act, the Commission and the Advisory Council: proposal to include reference to drug and alcohol misuse**

Stakeholder feedback provided to the QMHC, as well as to the previous review of the performance by the QMHC of its legislative functions, recommended that the title of the Act, the QMHC, and the Advisory Council, should include reference to alcohol and other drugs, or substance misuse.

The QMHC states that lack of these references “has required the Commission to continually reassert the importance of the dual focus”.<sup>3</sup>

### **Object of the Act and Guiding principles**

The object of the Act is “to establish the Queensland Mental Health Commission to drive ongoing reform towards a more integrated, evidence based, recovery-oriented mental health and substance misuse system” (section 4 of the Act).

Any person performing a function or exercising a power under the Act must have regard to the guiding principles provided in section 5 of the Act.

### **Survey responses**

Stakeholders provided the following responses in relation to Part 1 of the Act:

- the objects and guiding principles adequately and accurately reflect the way in which the objects are achieved;
- greater promotion of the objects and guiding principles would assist to drive any ongoing reform of the mental health and substance misuse system; and
- the guiding principles of the Act remain relevant.

Stakeholders also suggested a number of specific amendments to the wording in Part 1 of the Act:

- amend section 4(2)(b) to read ‘monitoring, reviewing, reporting on *and improving* the mental health system and the mental health and well-being of the people of Queensland including people with substance misuse issues or who are vulnerable to, or at risk of developing substance misuse issues’.
- Add monitoring and *implementing* the strategic plan.
- Include a statement about the commission’s role in advocacy, such as:
  - ‘to act as an advocate for the interests of people with mental illness and their families’; ‘to promote and facilitate collaboration and communication about mental health issues’ or ‘to work, independently and with others’
  - ‘to stimulate and support policy-makers and the funders and providers of mental health services in developing integrated, effective, and efficient methods or systems of providing care that meet the needs of their communities’.
- In Section 4(2)(a)(iv), replace ‘encourages integration’ with stronger wording, e.g. ‘promote’, to recognise the importance of integrated services in patient care.
- Specifically mention suicide prevention in the Act and when referring to the object of the strategic plan.

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<sup>3</sup> *Review of the Queensland Mental Health Commission Act 2013: Issues raised by stakeholders*, Jan 2017, page 2.

- Membership of the QMHDAC should include persons with the relevant skills, knowledge or experience who identify as Aboriginal or Torres Strait Islander.
- An increased focus on the needs of Aboriginal and Torres Strait Islander communities and individuals with multiple challenges, and that a provision be included to this effect in the mandatory requirements of the whole of government Strategic Plan.
- In relation to section 7(b) of the Act (establishing benchmarks and performance measures), consideration be given to providing additional specific performance measures in relation to Aboriginal and Torres Strait Islander Queenslanders.

## Findings

The issue of changing the title of the Act or the Commission is considered to be outside the scope of this review, which is limited to the effectiveness of the Act as currently drafted.

The object of the Act is to establish the Commission to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system and this already contemplates that the Commission's functions include 'improving' the mental health system.

In relation to the suggestion to include 'monitoring and implementing the strategic plan', the Commission is currently required, under section 11(1)(b) of the Act, to monitor and report to the Minister on implementation of the whole of government strategic plan. The QMHC can only facilitate implementation by relevant agencies.

Responsibility for implementing the strategic plan lies with the relevant government departments, in partnership with key non-government stakeholder organisations, groups, and consumers. Consequently, it is considered there is no need for an amendment to the Act in this regard.

In relation to the suggestion to include the term advocacy in part 1 of the Act it is considered that section 4(2)(a)(ii) of the Act already captures this concept:

“promote the best interests of—

(A) people with mental health or substance misuse issues, and their families, carers and support persons; and

(B) people who are vulnerable to, or otherwise at significant risk of, developing mental health or substance misuse issues.”

The words 'encourage integration' and 'promote integration' share a similar meaning, so there is no perceived benefit in this suggested change.

Suicide prevention is integral to the work of the Commission, as evidenced by the *Queensland Suicide Prevention Action Plan 2015-17* published by the Commission. The suggestion to include reference specifically to suicide prevention in the Act is not considered necessary in order for the Commission to develop policy in this important area.

Section 39 of the Act provides for membership of the QMHDAC to reflect the diversity of the Queensland community, and to ensure members have appropriate skills, knowledge or experience of mental health and substance misuse issues in relation to groups, including Aboriginal and Torres Strait Islander persons.

The Commission published a *Queensland Aboriginal and Torres Strait Islander Social and Emotional Wellbeing Action Plan 2016-18* which was developed following consultation with Elders, government and non-government service providers representing a broad range of interests, experiences and perspectives.

It is not proposed to amend section 7(b) of the Act to include specific performance measures for Aboriginal and Torres Strait Islander Queenslanders. This can, at the Minister's discretion, be managed administratively through a Ministerial direction being given to the Commissioner under section 13, requiring the Commissioner to develop performance measures for Aboriginal and Torres Strait Islander people in Queensland.

## **Part 2 Queensland Mental Health Commission**

Part 2 of the Act provides for the establishment of the Queensland Mental Health Commission, appointment of the Commissioner and other staff, and sets out the powers and functions of the Commission.

### **Survey responses:**

- Through this review of the Act, the Department of Health identified that a technical amendment may be required to section 24(1). Section 24(1) provides that the Commission may employ staff. However, section 14 provides that the Commission consists of the Commissioner and the Commission's staff. This can be interpreted to mean the Commission employs itself.
- One survey response noted that the extent to which the QMHC is able to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system is potentially impacted by the fact the QMHC is reliant on investment decisions in which the QMHC has no formal role.

### **Findings**

It may be necessary to amend either section 14 or section 24 to ensure that the power to employ staff applies properly under the Act. The Department of Health will seek advice from the Public Service Commission about the best way to ensure these provisions work correctly.

It is noted that section 34(2) of the Act requires relevant agencies to consult with the QMHC on their activities, expenditure and initiatives as required under the whole-of-government strategic plan. As such, it is not considered necessary to amend the Act in this regard.

#### **Recommendation 1**

Consult with the Public Service Commission to determine the best way to ensure sections 14 and 24 work together to avoid the anomaly.

## **Appointment term for the Commissioner**

### **Survey responses**

- Stakeholder responses suggested extending the term of the Mental Health Commissioner under the Act, from the current three years, to be similar to the Chief Executive of the Queensland Public Service Commission, whose term 'cannot be for more than five years'.

### **Finding**

Under the Act, the Mental Health Commissioner is appointed under section 18 for a term of three years (and no more and no less). An individual can be reappointed for a further three year term. Stakeholder responses suggested extending the term of the Commissioner under the Act to be similar to the Chief Executive of the Queensland Public Service Commission.

Given the role of the Mental Health Commission in driving system wide reform, it is essential that the Commissioner establish and build effective working relationships with key government agencies. Under the Act, the Commission can only influence, rather than compel implementation of strategic policy directions in the mental health, alcohol and other drugs sectors. It takes time to establish these relationships, and having a longer appointment term lends itself to enabling the Commissioner to potentially have greater influence across government.

By way of comparison, the New South Wales Mental Health Commissioner, and the Victorian Mental Health Commissioner are appointed for terms up to five years under their enabling legislation as statutory bodies. The Victorian Commissioner can be reappointed, and the New South Wales Commissioner cannot be appointed for more than two successive terms.

The appointment of other Mental Health Commissioners in Western Australia and South Australia, and the National Mental Health Commission, are made under the equivalent of Queensland's Public Service Act and are not statutory office holders.

The National Mental Health Commission's nine Commissioners are appointed at different times for different periods. They are generally appointed by the Minister for two years or less, although they can be extended. The South Australian Mental Health Commissioner's initial appointment was for two years with a 12 month extension pending a review of governance of mental health in South Australia. The South Australian Mental Health Commission informally advised that if the organisation were a statutory body, the appointment term would be for a five year period. The West Australian Mental Health Commissioner is also appointed for a term of up to five years.

Other statutory office holders in Queensland include the Family and Child Commission's Commissioners who are appointed for a term of up to three years; the Public Advocate who is appointed for four years, and the Health Ombudsman who is appointed for three years. However, the functions of these bodies, particularly that of the Health Ombudsman, differ from that of the Commission, whereby the need for continuity in the Commissioner or equivalent role, to develop and maintain strategic relationships, and to influence policy development over an extended period, is not the same.

The most directly comparable Commissioner appointment terms for the purposes of this review are the Mental Health Commissioners in New South Wales and Victoria.

The proposal to consider amending the Act to provide for the Commissioner to be appointed for a term of up to 5 years is supported, as it provides greater continuity in the role of Mental Health Commissioner to build relationships with key stakeholders to drive reform across the system, and more flexibility in relation to the duration of their term of appointment.

Any reappointment/extension of the current Mental Health Commissioner will need to be made in accordance with the Significant Appointment process outlined in the Cabinet Handbook.

#### **Recommendation 2**

Consider amending section 18 to provide that the term of office of the Commissioner may be for a period of up to 5 years.

### **Mental Health and Drug Advisory Council (QMHDAC) membership**

#### **Survey responses**

- One stakeholder response suggested nominations for appointment to the QMHDAC be invited from non-government representative bodies for the Minister's consideration.

#### **Finding**

The recruitment process undertaken for vacancies on the Council currently involves Queensland Health writing to peak organisations seeking nominations, as well as publicly advertising vacancies to the broader community.

The current process for recruitment of the Queensland Mental Health and Drug Advisory Council is managed administratively by Queensland Health and includes contacting relevant non-government organisations to circulate expressions of interest.

These steps are consistent with the Department of Health's Ministerial approved *Recruitment and Selection Guidelines* which set out expectations regarding appointments to health portfolio bodies. These guidelines are periodically reviewed and updated. Those guidelines reflect the whole-of-government requirement for open and transparent recruitment processes to be undertaken.

Recruitment processes need to change from time to time to continue to reflect contemporary processes, which means they are not suited to be enshrined in legislation.

## **Part 3 Whole-of-government strategic plan and reporting by the commission**

Under part 3 of the Act, the Commission is required to develop a whole of government strategic plan in consultation with relevant persons and agencies, and the plan must be approved by the Minister. The Commission must facilitate the implementation of the

strategic plan and monitor and report to the Minister on its implementation, and the strategic plan must be reviewed at least once every five years.

The Commission released its *2014-2019 Strategic Plan* on 21 November 2018.

Section 29 of the Act enables the Commission to prepare a report (an 'ordinary report'), subject to notifying the Minister of the intention to prepare such a report on any of the following:

- a systemic issue relating to the mental health and substance misuse system or affecting people who have mental health or substance misuse issues;
- the funding of mental health and substance misuse issues.

Under section 30 of the Act, the Minister must table a copy of an ordinary report as soon as practicable after receiving it.

### Survey responses

- The Department of Housing and Public Works' (DHPW) survey response stated that QMHC's first Ordinary Report (*Ordinary Report on Social Housing: Systemic issues for tenants with complex needs*, May 2015)<sup>4</sup> has been influential in changing both DHPW policy and practice for providing housing assistance to people with mental illness and demonstrates the effectiveness of these provisions in the Act.
- Some responses suggested setting a timeframe for the Minister to table ordinary reports in the Legislative Assembly, as well as including a definition of an ordinary report in the Act.

### Findings

No amendments were identified for Part 3 relating to the development, implementation and review of the strategic plan. However, respondents did commend the QMHC for its planning contributions to the mental health and substance misuse sectors.

Responses to the survey supported the strategic planning work and maintaining the existing legislative provision for ordinary reports to be produced by the QMHC.

To date, the QMHC has published one ordinary report, on social housing. The dictionary, in the schedule of the Act, defines 'ordinary report' by reference to section 29. Section 29 of the Act sets out the circumstances in which the QMHC can prepare an ordinary report. This section is considered to be appropriate and sufficient for the purposes of the Act. Consequently, it is not considered necessary to change the current definition.

The Act includes the requirement to table a report 'as soon as practicable', and this wording is used in other legislation, including section 192 of the *Family and Child Commission Act 2014*. Establishing a specific timeframe in the Act for tabling ordinary reports in the Legislative Assembly is not considered necessary. Maintaining the existing provision means a report can be tabled in a short period of time if necessary, or longer if specific or more detailed consideration is required.

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<sup>4</sup> *Ordinary Report on Social Housing: Systemic issues for tenants with complex needs*, May 2015: <https://www.qmhc.qld.gov.au/about/publications/browse/ordinary-reports/ordinary-report-on-social-housing-systemic-issues-for-tenants-with-complex-needs-may-2015>

## Part 4 Cooperation between commission and public sector and publicly-funded agencies

Part 4 of the Act requires the Commission and relevant agencies to work cooperatively in the exercise of their respective functions.

Survey responses included the following points in relation to Part 4 of the Act:

- The QMHC has actively supported cooperation between the QMHC and Queensland government departments and been part of agency working groups and governance arrangements for specific initiatives.
- The QMHC has developed effective partnerships with relevant agencies across government operating under the current legislative provisions.
- One respondent noted that they were not aware of the extent to which the cooperation provisions in the Act have influenced agencies to incorporate investments and initiatives that those agencies would not have undertaken but for the influence of the Strategic Plan and the QMHC.
- One respondent noted that given the QMHC operates in a complex environment of limited resources, its challenge will always be to identify key issues, facilitate discussion and resolve to commit to agreed solutions; and cooperative work, including the QMHC's ability to influence government with constructive dialogue and research, is the cornerstone to reform.
- Wider consultation and engagement is required by the QMHC, including a greater promotion of such activities across government agencies.
- Some responses to the survey considered it appropriate to make agencies accountable for the implementation of the whole-of-government strategic plan and the guiding principles.
- One survey response suggested amending section 36 of the Act to indicate any dispute between the QMHC and a public sector department or unit regarding the provision of information required by the QMHC (for the exercise of its functions), is to be resolved by the Minister.

### Finding

Survey responses highlighted the challenges faced by the Commission in working across government and non-government agencies to influence system reform, in the absence of any legislative authority to enforce such change.

Stakeholders who provided responses to the PSC review of the performance of the QMHC suggested that the QMHC be provided with powers to hold health and non-health government departments accountable to the *Queensland Mental Health, Drug and Alcohol Strategic Plan 2014-2019* and related action plans (p.49, Queensland Mental Health Commission effectiveness review report). This accountability should equally apply to future strategic plans. The PSC report recommended this issue be considered in the context of the Act review.

The explanatory notes for the Queensland Mental Health Commission Bill<sup>5</sup> (explanatory notes) refer to the legislation including a number of measures which, taken together, provide the QMHC with sufficient capacity to build a network of robust partnerships and provide the required strategic leadership. These include:

- providing for the QMHC to develop a whole-of government strategic plan to provide high level guidance and direction to relevant government and non-government agencies;
- requiring the QMHC to monitor and report to the Minister on implementation of the whole-of-government strategic plan;
- requiring the QMHC to prepare a special report on any significant systemic issue, as directed by the Minister; and
- providing for the QMHC to prepare, in consultation with affected agencies, an ordinary report on systemic issues or on the funding of mental health and substance misuse services.

The explanatory notes describe the Commission as having an influencing, rather than enforcing role in leading strategic policy implementation across the government and non-government sectors in mental health and substance misuse.

The intent of the Commission's role is to provide 'guidance and direction' to other agencies in relation to implementation of the new *'Shifting minds: Queensland Mental Health Alcohol and Other Drugs Strategic Plan 2018-2023'*, as well as future strategic plans. No legislative amendments are proposed to change the Commission's role.

The review could find no evidence of disputes having arisen between the Commission and government departments about providing information. As such, no amendments are proposed in relation to section 36.

## Part 5 Queensland Mental Health and Drug Advisory Council (QMHDAC)

Part 5 of the Act provides for the functions, membership and conduct of business of the QMHDAC.

### Survey responses

Survey responses indicated that the functions of the QMHDAC appear to be appropriate as currently provided for under the Act.

Suggestions for improvements to the Act included:

- seeking nominations from non-government representative bodies for appointment to the QMHDAC; and
- QMHDAC members being appointed directly by the Commissioner (as under the section 31 of the *Family and Child Commission Act 2014*).

### Findings

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<sup>5</sup> Explanatory notes for the Queensland Mental Health Commission Bill:  
<https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-2012-1684#bill-2012-1684>

- Under section 39 of the Act, members of the QMHDAC are appointed by the Minister. In making appointments, the Minister must ensure the membership of QMHDAC reflects the diversity of the Queensland community and that members have appropriate skills, knowledge or experience for their role.
- By way of comparison, section 31 of the *Family and Child Commission Act 2014* provides for the principal commissioner to decide the membership of an advisory council, and in doing so, must ensure that at least one member of each advisory council is an Aboriginal person or a Torres Strait Islander.
- However, a key difference between the Family and Child Commission's advisory council and the QMHDAC is that one of the functions of the QMHDAC is to make recommendations to the QMHC in relation to the Commission's functions.
- Given this role of the QMHDAC, it would be inappropriate for the Queensland Mental Health Commissioner to appoint members of the QMHDAC, which could constitute a perceived conflict of interest. The current provisions in the Act for the Minister to appoint members of the QMHDAC are considered appropriate.

## Part 6 Cooperation between commission and council

Part 6 of the Act relates to cooperation between the QMHDAC and the QMHC. The QMHC must:

- support the QMHDAC in performing its functions by providing information about the performance by the QMHC of its functions;
- consult with the QMHDAC on any special or ordinary reports; and the whole of government strategic plan.
- If the QMHDAC makes a recommendation in relation to a function of the QMHC, the QMHC must respond to each recommendation within a reasonable period.

The QMHC is required to publish in its annual report, any recommendations received from the QMHDAC and actions taken by the QMHC in response to any recommendation.

### Survey responses

Survey responses indicated that these provisions appear to be appropriate and no refinements or amendments were suggested by survey responses in relation to Part 6 of the Act.

### Findings

Stakeholder feedback from the survey indicated no issues with Part 6 of the Act and that it is working effectively. Consequently, there are no amendments proposed.

The provisions in Part 6 of the Act are consistent with those in the New South Wales *Mental Health Commission Act 2012* which provides for the establishment of a Mental Health Community Advisory Council to provide advice to the Mental Health Commission in New South Wales.

Similarly, the Victorian Mental Health Complaints Commission has an advisory council. The South Australian Mental Health Commission has established a Community Advisory Committee and a Youth Advisory Committee to provide advice to the

Commission on its work. The National Mental Health Commission has also established an Advisory Board.

## **Part 7    Miscellaneous**

Part 7 of the Act provides for miscellaneous issues including delegations; protecting officials from liability; QMHC's guidelines; review of the QMHC; review of the Act; and a regulation making power.

### **Survey responses**

- Respondents indicated they have limited knowledge of circumstances in which the Commissioner's powers of delegation were used. However, from external observations the powers of delegation appear to be functioning effectively.
- No further limitations should be placed upon the Commissioner's power of delegation as any further limitations have the ability to reduce the QMHC's flexibility to respond to multiple issues at a given time.
- Education of children could be considered as an area of focus for the QMHC to institute generational change.
- Consideration be given to the publication of public facing resources which tell the stories of good practice and how new approaches are being implemented. These could reveal the practical reforms towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system. This could, in turn, build a stronger understanding about the lived experience of people with mental health or substance misuse issues, and their families, carers and support persons.
- One survey response suggested that reviews of the QMHC and the Act be implemented on a cyclical basis.

### **Findings**

- The Commission can develop policy and resources relevant to children under the provisions in the current Act. There is nothing in the Act which precludes the Commission undertaking work relating to the mental health of children.
- The suggested development of public facing resources by the Commission is an operational matter for the QMHC, and as such, is outside the scope of this Act review.
- The Department of Health considers that a commitment to review the QMHC and the Act is best managed administratively.

## Appendices

- Appendix A Terms of Reference for the review of the Act
- Appendix B Survey instrument
- Appendix C List of organisations sent the survey instrument

## Terms of Reference for a review of the *Queensland Mental Health Commission Act 2013*

### **Background**

Under section 56 of the *Queensland Mental Health Commission Act 2013* (the Act), the Minister must review the effectiveness of this Act as soon as practicable after the end of 3 years after the commencement of the Act.

As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

### **Objectives**

1. Meeting the legislative requirement for a review of the Act
2. Determining whether the provisions of the Act are operating effectively.

### **Scope**

The review scope is limited to considering the operational effectiveness of the Act's provisions.

Expressly out of scope of the review are:

- consideration of the role and functions of the Queensland Mental Health Commission
- matters addressed by relevant parts of the independent *Queensland Mental Health Commission effectiveness review* under section 55 of the Act.

### **Governance**

The review will be overseen by a steering committee which will be supported by the Office of Health Statutory Agencies (OHSA).

The proposed membership of the steering committee is:

- Mr Mark Tuohy, Director, OHSA (chair)
- Assoc. Prof. John Allan, A/Executive Director, Mental Health, Alcohol and Other Drugs Branch
- Dr Lesley van Schoubroeck, A/Mental Health Commissioner
- Mr Kingsley Bedwell, Member, Mental Health and Drug Advisory Council
- Ms Kyla Hayden, Senior Director, Social Policy, Department of the Premier and Cabinet

The steering committee will meet as required, but it is anticipated this will not be more than on three occasions being:

1. Initial Meeting – to endorse the Terms of Reference and the proposed process to be adopted and stakeholders engaged
2. Post consultation phase meeting – to consider findings and a draft report
3. Final meeting - to consider and endorse the final report and recommendations.

### **Approach**

Given the Act specifies the functions of the Queensland Mental Health Commission and its role in engaging with key government and non-government agencies, the review will seek the views of these stakeholders on the effectiveness of the Act's provisions in this regard. An initial survey is proposed as the primary means of engaging these stakeholders.

Further information to underpin the review will be sourced as required and directed by the steering committee and may, for example, include interviews with stakeholders.

### **Timeframe for the review**

It is envisaged that the review will commence in November 2016 and conclude with a report being submitted to the Minister by the end of May 2017. Phases and key activities of the review process are:

#### Stage 1: Initial Scoping

Draft Terms of Reference and submit brief to the Minister for approval by 30 September 2016.

#### Stage 2: Project Planning

Contact steering committee members, confirm and hold initial meeting arrangement. Steering Committee to endorse Terms of Reference and survey instrument.

#### Stage 3: Stakeholder Engagement

Conduct the survey and source further information (e.g. interviews).

#### Stage 4: Analysis of Feedback

Identify key issues identified in the survey results and propose recommendations for discussion at the second steering committee meeting.

#### Stage 5: Report Writing

Consolidate findings and recommendations, and submit a draft report to steering committee for review and feedback.

#### Stage 6: Communications

Submit final report to the Director-General and Minister for approval. Subject to Ministerial approval, prepare a Cabinet submission seeking endorsement for the report to be tabled in Parliament.

### **Key Stakeholders for consultation phase**

Peak Consumer and carers entities plus key government departments identified in the whole of government Queensland Mental Health and Drug and Alcohol Strategic Plan including:

#### Government Agencies:

- Anti-Discrimination Commission Queensland
- Arts Queensland
- Department of Aboriginal and Torres Strait Islander Partnerships
- Department of Agriculture and Fisheries
- Department of Communities, Child Safety and Disability Services
- Department of Education and Training
- Department of Environment and Heritage Protection
- Department of Housing and Public Works
- Department of Infrastructure, Local Government and Planning
- Department of Justice and Attorney-General
- Department of National Parks, Sport and Racing
- Department of Natural Resources and Mines
- Department of Science, Information Technology and Innovation
- Department of State Development
- Department of the Premier and Cabinet

- Department of Tourism, Major Events, Small Business and the Commonwealth Games
- Queensland Police Service
- Queensland Rail
- Queensland Treasury, Office of Fair and Safe Work
- Chair, Queensland Health Board Chairs Forum
- Chair, Queensland Health Chief Executives Forum

Non-government organisations and professional bodies:

- Queensland Alliance for Mental Health
- Queensland Network of Alcohol and Drug Agencies
- Queensland Voice
- Arafmi
- Multicultural Development Association (MDA)
- Queensland Council of Social Services
- Queensland Aboriginal and Islander Health Council
- QuIHN
- Roses in the Ocean
- Queensland Mental Health and Drug Advisory Council
- The Royal Australian & New Zealand College of Psychiatrists (RANZCP) Queensland Branch
- Australian College of Mental Health Nurses (Queensland Branch)
- Australian Psychological Society
- Australian Clinical Psychology Association
- Australian Association of Social Workers (Queensland Branch and North Queensland Branch)
- Occupational Therapy Australia Ltd (Queensland Division)

**Review Costs**

Costs associated with the review will be met within the existing resources and budget of the OHSA.

## **Section 56 Review of the Queensland Mental Health Commission Act 2013:**

### **Survey Questionnaire**

#### **Background**

The *Queensland Mental Health Commission Act 2013* (the Act) contains two sections, section 55 and section 56, that require the Minister for Health and Minister for Ambulance Services undertake two separate reviews.

Under section 55(1) of the Act, the Minister must arrange an independent review of the performance by the Queensland Mental Health Commission (the Commission) of its functions by 30 June 2016.

The section 55(1) review was completed by the Public Service Commission (PSC), and a report provided to the Minister. The report has since been published. Links to the report and the Commission's response are at <https://www.qmhc.qld.gov.au/about-us/our-performance/qmhc-effectiveness-review/>

This survey questionnaire relates to the review required under section 56 of the Act.

Under section 56 the Minister must also review the effectiveness of the Act as soon as practicable after the end of 3 years after the commencement of the Act – that is after 30 June 2016.

As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

#### **Review of Queensland Mental Health Commission Act 2013**

The Minister for Health and Minister for Ambulance Services has approved a review process of the Act as required under the legislation.

The review will be overseen by a steering committee which is supported by the Office of Health Statutory Agencies (OHSA). Membership of the steering committee includes representatives from the Department of Health; Queensland Mental Health Commission; Mental Health and Drug Advisory Council and the Department of the Premier and Cabinet.

Feedback from key stakeholders during the consultation phase of the review of the effectiveness of the Queensland Mental Health Commission, as well as issues identified by the Queensland Mental Health Commissioner, are being taken into consideration where appropriate, as part of the Act review.

A survey is also being sent to you/your organisation as a key stakeholders as part of the Act review (attached) to identify any other issues for consideration.

#### **Scope**

As prescribed by section 56 of the Act, the scope of the review is limited to determining whether the provisions of the Act are operating effectively.

## Feedback previously provided in other forums

It is acknowledged that many stakeholders have already contributed valuable feedback in relation to matters relevant to the operation and effectiveness of the Act through a number of different forums.

Stakeholders are not expected to restate feedback that has been raised in other forums and which is relevant to this review of the effectiveness of the Act. This includes feedback that was provided or has been captured by:

- stakeholders feedback during the consultation phase of the section 55 review of the Commission conducted by the PSC;
- the Queensland Mental Health Commissioner's submission to the PSC as part of the section 55 review of the performance of the Commission, are summarised below;
- the Commission's annual performance survey conducted on its behalf by Paxton Partners.

A summary of those, including brief rationale and comparative information is available on the QMHC website <https://www.qmhc.qld.gov.au/about-us/our-performance/qmhc-act-review/> and listed below.

## Issues to be considered:

### *Commissioner*

1. Whether to extend the Appointment term for the Commissioner to four or five years.
2. The Commissioner should be a person with a lived experience of mental health, drug or alcohol misuse.
3. Include a statement which provides greater clarity about the Commission's role.

### *Advocacy*

4. Consider including in section 11(2) other higher order functions such as systemic advocacy.
5. Adopt a provision under the New Zealand *Mental Health Commission Act 1998*, for the QMHC to 'act as an advocate for the interests of people with mental illness and their families', and 'to work independently and with others'.

### *Other issues*

6. Section 14: remove reference to the Commission including staff.
7. Section 30 requires the Minister to table ordinary reports "as soon as practicable after receiving it". Consideration should be given to setting a timeframe (ie. Health Ombudsman Act 2013 requires tabling within 14 days, and the Public Advocate reports must be tabled by the Minister within 5 days).
8. Have members of the Queensland Mental Health and Drug Advisory Council appointed directly by the Commissioner as they are under the *Family and Child Commission Act 2014*.
9. Title of the Queensland Mental Health and Drug Advisory Council should include reference to alcohol.

10. 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 the commissioner, or at the request of the commissioner.
11. The Act (s29) includes specific provisions around the preparation of ordinary reports, including provision to make recommendations for tabling in Parliament. There is no definition of what constitutes an ordinary report.
12. There is no mention of suicide prevention in the Act, however it could be considered to be included within the broader mental health responsibilities.

**Issues identified which are out of scope for the Act review:**

13. The Commissioner should not be under the direction of the Minister, and report to a Parliamentary Committee instead (like the Health Ombudsman). The Commission should be more independent of Government.
14. Any change to the role and functions of the Queensland Mental Health Commissioner.
15. Matters addressed by the independent Queensland Mental Health Commission effectiveness review under section 55 of the Act.
16. Commission administering funding for mental health, drug and alcohol services.
17. Commission structure could include Deputy Commissioners.
18. Appoint a consumer and carer Commissioner.
19. The Commission could oversee community visitors, a requirement under the Mental Health Act 2016, which is currently with the Department of Justice and Attorney-General.
20. Provide the Commission with powers to hold health and non-health government departments accountable to the Queensland Mental Health, Drug and Alcohol Strategic Plan 2014-19 and action plans.
21. Some stakeholders would like the Commission to have a stronger role in promotion, prevention and early intervention.

**Survey**

The attached survey questions seek your views as key stakeholders, on the effectiveness of the Act.

**Queensland Mental Health Commission Act 2013**  
**Survey Questions**

**Part 1** (sections 1- 7) of the Act details the object and guiding principles as well as an interpretation section providing the meaning of the whole-of-government strategic plan.

- **Do the objects and guiding principles adequately and accurately reflect the way in which the objects are mainly achieved?**
- **Are the mandatory matters in the whole-of-government strategic plan appropriate?**
- **Are there any additional matters that should be incorporated into the whole-of-government strategic plan?**
- **Are there any other legislative refinements that could be made to improve the operation and application of Part 1 of the Act?**

**Part 2** (sections 8-24) of the Act details the establishment, functions and powers of the Queensland Mental Health Commission.

- **Do the provisions describing the functions, powers and staff of the Queensland Mental Health Commission (with the exception of those of the Commissioner which is being considered in a separate process and is therefore out of scope) enable the Commission to meet the objects of the Act?**
- **Are there any other refinements that could be made to improve the operation and application of Part 2 of the Act?**

**Part 3** (sections 25 - 33) of the Act provides for a whole-of-government strategic plan and reporting by the Commission.

- **Noting that the whole-of-government strategic plan has been published, are there any amendments required to Part 3 of the Act which covers the development, implementation and review of the strategic plan?**
- **Part 3 outlines the process for preparing, consulting on and delivering special reports and ordinary reports. Are these provisions operating effectively, having regard to the objects of the Act?**
- **Are there any other refinements that could be made to improve the operation and application of Part 3 of the Act?**

**Part 4** (sections 34 – 36) of the Act provides for cooperation between the Commission, and public sector and publicly-funded agencies.

- **Are the provisions requiring cooperation between the Commission and relevant agencies sufficient and effective in driving the implementation of the whole-of-government strategic plan across the Queensland Government?**
- **Are there any other refinements that could be made to improve the operation and application of Part 4 of the Act with respect to the requirements to cooperate and to provide information?**

**Part 5** (sections 37 – 47) of the Act outlines the functions, membership and conduct of business relating to the Queensland Mental Health and Drug Advisory Council.

- **Are the functions of the Council sufficient to assist the Commission in meeting its objectives?**
- **Are the membership and governance arrangements of the Council appropriate to support the Commission in meeting its objectives under the Act?**
- **Are there any other refinements that could be made to improve the operation and application of Part 5 of the Act?**

**Part 6** (sections 48 – 51) of the Act outlines cooperation between the Queensland Mental Health Commission and the Queensland Mental Health and Drug Advisory Council.

- **Are the provisions requiring cooperation sufficient and effective to give effect to the legislative functions of each body?**
- **Are there any other refinements that could be made to improve the operation and application of Part 6 of the Act?**

**Part 7** (sections 52 – 57) of the Act provides for miscellaneous issues including delegations; protecting officials from liability; commission's guidelines; review of the commission; review of the Act; and regulation-making power.

- **Are the Commissioner's powers of delegation operating effectively?**
- **Are there any limitations that should be placed upon the Commissioner's power of delegation?**
- **In addition to commission guidelines, are there any other resources that the Commission can create in relation to the operation of the Act that should be included?**
- **Are there any other refinements that could be made to improve the operation and application of Part 7 of the Act?**

# Appendix C

## Survey Recipients

### Section 56 Review of the *Queensland Mental Health Commission Act 2013*

As part of the review, Queensland Health release a survey document instructions in the actual templates are a condensed version of the *Word template user guide v2010*. To read instructions for v2003, please refer to the *Word template user guide v2003*.

- Anti-Discrimination Commission Queensland
- Arts Queensland
- Department of Aboriginal and Torres Strait Islander Partnerships
- Department of Agriculture and Fisheries
- Department of Communities, Child Safety and Disability Services
- Department of Education and Training
- Department of Environment and Heritage Protection
- Department of Housing and Public Works
- Department of Infrastructure, Local Government and Planning
- Department of Justice and Attorney-General
- Department of National Parks, Sport and Racing
- Department of Science, Information Technology and Innovation
- Department of State Development
- Department of the Premier and Cabinet
- Department of Tourism, Major Events, Small Business and the Commonwealth Games
- Queensland Police Service
- Queensland Rail
- Queensland Treasury
- Hospital and Health Board Chairs' Forum, Queensland Health
- Health Service Chief Executives Forum, Queensland Health

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- Queensland Alliance for Mental Health
  - Queensland Network of Alcohol and Drug Agencies
  - Queensland Voice
  - Arafmi Queensland Inc.
  - Queensland Council of Social Services
  - Multicultural Development Association (MDA)
  - Queensland Aboriginal and Islander Health Council
  - QulHN
  - Roses in the Ocean
  - Queensland Mental Health and Drug Advisory Council
  - The Royal Australian & New Zealand College of Psychiatrists (RANZCP) Queensland Branch
  - Australian College of Mental Health Nurses (Queensland Branch)
  - Australian Psychological Society
  - Australian Association of Social Workers (Queensland Branch)
  - Australian Association of Social Workers (North Queensland Division)
  - Occupational Therapy Australia Ltd (Queensland Division)

