

# Responding to the Interim Report

Review of the National Mental Health and Suicide Prevention Agreement

## **ACKNOWLEDGEMENT OF COUNTRY**

I acknowledge the traditional owners of the lands on which this submission is written, the Turrbal and Yuggera peoples. I pay my respects to Elders past and present. I affirm that sovereignty was never ceded and that such an acknowledgement engenders duties on non-Indigenous Australians to support truth-telling and justice.

## ABOUT SIMON KATTERL CONSULTING

Simon Katterl Consulting (SKC) is a concluding consulting service run by Simon Katterl. SKC provides advisory, human rights, co-design, regulatory and facilitatory services to mental health, legal and regulatory services. SKC will wind down its operations in mid-2025 as Simon Katterl takes on a role as CEO of the Mental Health Lived Experience Peak Queensland. This submission is written in the SKC capacity.

### Projects

Simon Katterl and SKC has experience in the following projects and work areas:

- **Understanding Mental Health Commissions in Australia, Online Course (2025)** Developed and sold Australia's only mental health course on mental health commissions in Australia. The course draws on peer-reviewed work and brings together information to grow public awareness and promote national improvement in mental health commissions.
- **Consumers Leading in Governance: Human Rights and Lived Experience Lecturer (2024)** Lectured on the human rights component of VMIAC's "Consumers Leading in Governance" course, which supports mental health consumers with governance knowledge, leadership skills, and practical board experience to drive consumer perspectives in the mental health system.
- **Member, Academic Board, Cairnmillar Institute (February 2024 - Present)** Advises the Board on course and program proposals, related policies, and quality assurance, making recommendations on program accreditation, design strategy, admissions standards, and regulatory compliance.
- **Human Rights from the Top: Mental Health Leadership (2023-2024)** Delivered human rights training to reshape public mental health services. Integrated peer-reviewed research with government advisory experience, equipping sector leaders for rights-based practice. Engaged leading organizations including Mind Australia, Wellways, National Eating Disorder Collective, Monash Health, and the Victorian Collaborative Centre for Mental Health & Wellbeing.
- **Lead, State Acknowledgement of Harm Project (2022-2023) - VIC** Advised the Minister for Mental Health on systemic harm accountability, producing the landmark "Not Before Time" report. Led trauma-informed collaboration with consumer and carer co-authors, established safety protocols, undertook deep engagement with First Nations people, navigated complex stakeholder relationships, and delivered evidence-based reform recommendations to the Minister.
- **Co-Lead, Human Rights at the Heart Project (2022-2023) - VIC** Advised on transforming the Mental Health and Wellbeing Division's legal processes through tools based on the Charter of Human Rights and Responsibilities Act 2006 (Vic). Engaged across the Department, developed user-friendly tools, and internally socialized for impact.
- **Chair, Committee of Management, Victorian Mental Illness Awareness Council (November 2019 - March 2022, November 2023 - May 2024)** This

role included driving governance structure, support, and performance of the CoM and its members, modelling and maintaining consumer-perspective values, principles, and processes, and representing VMIAC on matters of strategic importance and in high-level government meetings.

- **Policy & Research Officer, Victorian Equal Opportunity & Human Rights Commission (July 2019 - February 2020)** Provided research and policy advice across several projects and policy areas, including examining systemic trends across Victoria's human rights laws through research and consultations, and designing and implementing policy recommendations to address systemic issues.
- **Consumer Advisor (Contracted), Royal Commission into Victoria's Mental Health System (August 2019 - December 2020)** Worked in a consumer advisor role on contract periodically, providing multi-stage input into content areas and reviews of chapters and recommendations. Subject areas included consumer leadership, human rights and mental health law, quality and safety, regulatory oversight and systems management, trauma-informed care, digital mental health, and community mental health.
- **Senior Resolutions Officer, Mental Health Complaints Commissioner (April 2017 - November 2017)** Worked as a senior member of the Resolutions & Review Team regulating mental health services through complaints. Reviewed and developed assessment approaches for complex consumer/carer complaints, benchmarked practice against relevant legislation and standards, and utilized communication skills to influence service management. Demonstrated expertise in mental health regulation, conflict resolution, and stakeholder engagement.

Simon Katterl is also the respondent in the case *Mental Health and Wellbeing Commission v Katterl* Z405/2023, which is an appeal by the Mental Health and Wellbeing Commission to a decision by the Office of the Victorian Information Commissioner ordering the release of routine regulatory data.

## Relevant publications

I have experience publishing peer reviewed work, including the below (some of which are attached).

Bossewitch, Jonah et al, *Digital Futures in Mind: Reflecting on Technological Experiments in Mental Health & Crisis Support* (University of Melbourne, 2022) <<https://automatingmentalhealth.cc/media/pages/digital-futures-in-mind-report/ba660f37e9-1662080126/digital-futures-in-mind-report-aug-2022-final.pdf>>

Gilbert, Kellie et al, 'Digital Futures in Mind: Why Lived Experience Collaboration Must Guide Digital Mental Health Technologies' [2024] *Australian Journal of Social Issues* ajs4.355

Katterl, Simon, 'Examining the Workplace Rights of Mental Health Consumer Workers' (2022) 46(5) *Australian Health Review* 550

Katterl, Simon, 'From Principles to Practice: Clarifying New Obligations under Victoria's Mental Health and Wellbeing Act 2022' [2024] *Australasian Psychiatry* 10398562241251595

- Katterl, Simon, 'Preventing and Responding to Harm: Restorative and Responsive Mental Health Regulation in Victoria' (2023) 58(2) *Australian Journal of Social Issues* 441
- Katterl, Simon, 'Regulatory Oversight, Mental Health and Human Rights' (2021) 46(2) *Alternative Law Journal* 149
- Katterl, Simon, 'Resolving Mental Health Treatment Disputes in the Shadow of the Law: The Victorian Experience' (2023) 2023(September) *Australian Dispute Resolution Bulletin* 20
- Katterl, Simon, 'The Importance of Motivational Postures to Mental Health Regulators: Lessons for Victoria's Mental Health System in Reducing the Use of Force' [2021] *Australasian Psychiatry* 10398562211038913
- Katterl, Simon, 'Words That Hurt: Why Mental Health Stigma Is Often Vilification, and Requires Legal Protection' (2023) 0(0) *Alternative Law Journal* 1
- Katterl, Simon and Sharon Friel, 'Regulating Rights: Developing a Human Rights and Mental Health Regulatory Framework' in Kay Wilson, Yvette Maker and Piers Gooding (eds), *The Future of Mental Health, Disability and Criminal Law* (Routledge, 2023) 267
- Katterl, Simon and Kerin Leonard, *Putting Human Rights at the Heart: Applying Human Rights* (Simon Katterl Consulting & Lionheart Consulting Australia, August 2023) <<https://www.simonkatterlconsulting.com/writing/launch-of-new-resources-putting-human-rights-at-the-heart>>
- Katterl, Simon and Kerin Leonard, *Putting Human Rights at the Heart: Thinking about Human Rights* (Simon Katterl Consulting & Lionheart Consulting Australia, August 2023) <<https://www.simonkatterlconsulting.com/writing/launch-of-new-resources-putting-human-rights-at-the-heart>>
- Maylea, Chris et al, 'Consumers' Experiences of Rights-Based Mental Health Laws: Lessons from Victoria, Australia' (2021) 78 *International Journal of Law and Psychiatry* 101737
- Simmons, Magenta B and Simon Katterl, 'Cautions on Digital Mental Health' [2024] *Nature Human Behaviour* 1

# PRODUCTIVITY COMMISSION'S FINDINGS & RECOMMENDATIONS

Thank you for the opportunity to briefly respond to the Productivity Commission's (**the PC**) Interim Report on the Mental Health and Suicide Prevention Agreement Review (**the Review**). The review outlines various issues in the national mental health and suicide prevention system and provides a series of recommendations.

## RESPONDING TO THE FINDINGS & RECOMMENDATIONS

This submission does not seek to respond to all findings and recommendations of the review. However, it notes positively:

- The focus on lived experience participation and leadership at all levels of the National Mental Health Suicide Prevention Agreement (**the Agreement**), including at governance levels and inclusion of the peak bodies
- The identification of the barriers that people with lived experience face in accessing quality, voluntary and safe mental health supports
- The recommendations to develop a scope of practice for the peer workforce
- The importance of co-designing the next Agreement and the importance of developing a new National Mental Health Strategy
- The importance of developing a separate First Nations schedule and suicide prevention schedule within the agreement
- The focus on improving governance, accountability, public reporting and data collection.

It is this final point on governance, accountability, public reporting and data collection that this submission contributes to, as well as a focus on human rights.

## MENTAL HEALTH COMMISSIONS

### NATIONAL MENTAL HEALTH COMMISSION RECOMMENDATIONS

In the Interim Report of the Review, the PC highlights the importance of the National Mental Health Commission's (**NMHC**) role and standing being enhanced. This followed the culture, capability and efficiency review in 2023-2024. The Interim Report recommended that the next Agreement formalise the role of the National Mental Health Commission as the entity responsible for ongoing monitoring, reporting and assessment of progress against the Agreement's outcomes and that it should have legislative provisions to compel information from Commonwealth, state

and territory agencies. It should be established as an independent statutory authority<sup>1</sup>.

This submission supports this proposal and argues that:

- The current reform trajectory developed by the Commonwealth Government will not achieve this recommendation and require intervention, and
- Implementation of the Agreement will not be possible without similar reform of state and territory mental health commissions.

## COMMONWEALTH GOVERNMENT'S INADEQUATE PROCESS TO REFORM THE NATIONAL MENTAL HEALTH COMMISSION

This submission supports and does not seek to emulate other submissions that have highlighted the inadequate consultation process by the Department of Health, Disability and Ageing<sup>2</sup>. It instead focuses on the substantive elements of those proposed by the Commonwealth Government and their shortcomings.

Guidance on creating independence statutory agencies has been lacking in the development of mental health commissions in Australia. Relevant guidance can be drawn from the Paris Principles. The Paris Principles<sup>3</sup> are a set of international standards that outline the minimum requirement for national human right institutions. Elements of the Paris Principles include:

- A broad mandate to protect and promote human rights
- Specific responsibilities to provide opinion and reports to Parliament
- The necessity to contribute reports on matters relating to human rights
- A pluralistic composition of its members
- Independent appointment processes
- A stable mandate with fixed terms of appointment
- Sufficient funding
- Freedom of action to inquire into matters of concern and obtain necessary information.

Other human rights implementation processes have provided further guidance on the necessity of independent accountability agencies<sup>4</sup>.

The above guidance is provided in light of the Commonwealth Government's consultation and Discussion Paper in 2024. This Discussion Paper indicated that the Commonwealth Government has failed to outline an adequately empowered and independent NMHC in the following ways:

- The governance structure remains led by a CEO, keeping commissioners in largely advisory structures, unlike other state mental health commissions where strategic leadership is driven by commissioners
- The level of independence in all of the four proposals is unclear, including regarding the statutory office, where it is unclear whether this will entail the level of independence necessary for an agency to hold important coercive (information compelling) powers

- A reliance on the administrative capabilities of the Department, leaving it further open to an erosion of independence
- A failure to provide powers to compel information from state and territory as well as the Commonwealth Government, to monitor and report on adherence to the Agreement
- The failure to adequately embed lived experience leadership as well as Indigenous self-determination into the leadership and governance of the proposals
- An absence of human rights mentioned in the statutory objectives of the proposed NMHC, despite the important role this will have in aiding the Commonwealth and other jurisdictions' implementation of the Convention on the Rights of Persons with Disabilities, the UN Declaration on the Rights of Indigenous Persons and more.

Therefore while this submission supports the Review's Interim Report and its call for an independent NMHC, this call may need to be strengthened and clarified in order to ensure Commonwealth Government action.

## STATE AND TERRITORY COMMISSIONS

The Federated structure of the Constitution and as such the mental health and suicide prevention system brings challenges. These include the roles that Commonwealth, state and territory governments have in implementing the Agreement. A barrier that impairs the ability to drive implementation is the diverse and at times dysfunctional nature of our state and territory mental health commissions.

Australia's mental health commissions remain patchwork of approaches that undermine rather than support implementation of the Agreement and in protecting human rights. State and territory governments, in providing for the governance of the mental health system and mental health policy, have different tasks and responsibilities. Mental health commissions reflect differing ways in which governments seek to achieve such tasks. These general governance tasks that much be achieved by the system include:

- Systems monitoring – monitoring the implementation of policies and plans, and the routine operation of the mental health system.
- Strategic planning – government planning for mental health and other key policies.
- Systems management – daily stewardship of the mental health system, including addressing the social determinants of mental health.
- Advice – providing expert advice that informs strategic planning and systems management.
- Commissioning – the purchasing of services, in this case to partially fulfill obligations under a renewed Agreement.
- Education – educating the public (on matters of mental health) and the mental health system (on workforce capability items).
- Regulation and enforcement – enforcing standards, such as in human rights and mental health legislation.



- Coordination – bringing the sector and system together to advance common or crucial goals.

Governments – partially in response to their size but also as a reflection of their commitment to reform – have taken different responses to how to fulfill these functions, including through the creation of mental health commissions.

Table 1 indicates some of these functions summarised in each of the state and territory mental health commissions or similar bodies. Tasmania and the Northern Territory do not have mental health commissions.

Jurisdiction	Commission	Legislative Basis (or otherwise)	Functions
ACT	Office of Mental Health and Wellbeing	No statutory objectives or functions. A creation of policy.	Systems monitoring Strategic planning Advice Coordination Education
New South Wales	Mental Health Commission of New South Wales	<i>Mental Health Commission Act 2012 (NSW)</i>	Systems monitoring Strategic planning Advice Coordination Education
Victoria	Mental Health and Wellbeing Commission	<i>Mental Health and Wellbeing Act 2022 (Vic)</i>	Systems monitoring Advice Education Regulation and Enforcement
Queensland	Queensland Mental Health Commission	<i>Queensland Mental Health Commission Act 2013 (Qld)</i>	Systems monitoring Strategic planning Advice Coordination Education
Western Australia	Mental Health Commission of Western Australia	Established under the <i>Public Sector Management Act 1994 (WA)</i> as an agency  Discrete commissioning function under <i>Health Services Act 2016 (WA)</i>	Does not have clear statutory functions.  Does have a function embedded within the <i>Health Services Act 2016 (WA)</i> to enter into agreements to commission services.

South Australia	Mental Health Commissioner of South Australia	No statutory basis.	No statutory functions or objectives. Government proposing to create commissioner in coming months.
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Many mental health commissions have been tasked the role of advising governments and assisting or leading in the strategic planning process. This undermines their independence by requiring them to monitor plans that they implemented, limiting their ability to adequately critique such plans if they prove ineffective. Similarly, the development of strategic plans should be a core function of a capable government department. The mental health commissions focusing on advisory and strategic planning functions lack adequate independence and the ability to hold governments accountable for their implementation of policy (such as the Agreement) and their stewardship of the mental health system. This also limits their ability to regulate and enforce standards within the tertiary mental health system, which is the primary domain of state and territory governments under our constitutional arrangements.

Both Victoria and Western Australia have adopted alternative approaches to dividing up these functions. In Victoria, the Mental Health and Wellbeing Commission has functions to regulate and enforce standards within mental health services as well as monitor the overall performance of the mental health system and of community mental wellbeing. Western Australia holds a function to commission (purchase) mental health services. It is the case that these two approaches are not compatible within the one agency: a mental health commission would not be well placed to commission services while also being responsible for issuing compliance notices against those same services around quality and safety issues. Therefore a choice would likely need to be made about which of these functions would be best kept within the Commission to advance the Agreement and broader performance of the system.<sup>5</sup>

This submission puts forward that the key functions of mental health commissions should be as independent arbiters of the mental health system, with the important state capability of developing strategic plans and stewarding the system best left within governments. Communities should be empowered to commission services, with distinct leadership from people with lived experience. The quality and safety of those services should be overseen and standards enforced by a mental health commission, with that commission also monitoring the performance of the overall system and of community wellbeing. Whatever the distribution of functions, the implementation of the Agreement will need to confront the reality that the disparate approach to state and territory mental health commissions and their systems' broader governance arrangements represents a major barrier to the Agreement's implementation.<sup>6</sup>

## HUMAN RIGHTS

The final element of this submission briefly reflects on the importance of human rights as a foundation and as a measurable outcome of the Agreement and subsequent Plan. The Commonwealth Government, and by extension state and territory governments, have duties under international human rights law to respect,

protect and fulfill human rights. These duties directly apply to the mental health system.

Their application is perhaps most notable by the failures of the current mental health system approach. All state and territory governments legislate mental health laws that are inconsistent with international human rights law, and may constitute in some instances torture or inhuman and degrading treatment<sup>7</sup>. Such laws are argued as containing safeguards and using compulsory treatment as a last resort. However, evidence suggests that compliance with such safeguards and minimum standards is so low that for some such rights are rendered “illusory”<sup>8</sup>. Indeed, reports to the Victorian Mental Health Minister have argued that restorative justice processes are necessary to respond to harms that may constitute gross human rights violations<sup>9</sup>. These rights breaches are the product of many failures, including a lack of Commonwealth leadership to implement international human rights standards.

Some states and territories have established human rights legislation to domestic these standards into local law. The *Charter of Human Rights and Responsibilities Act 2006* (Vic), the *Human Rights Act 2004* (ACT) and the *Human Rights Act 2019* (Qld) all carry similar dialogue models that preserve Parliamentary supremacy while imposing important obligations on governments and mental health services to properly consider and comply with human rights when performing their roles. This includes the functions that underpin the overall governance of the system, including strategic planning, stewardship, regulation and enforcement. While compliance with these laws is not guaranteed<sup>10</sup>, they represent an opportunity to mobilise further pressure and attention to human rights compliance.

With the Commonwealth Government yet to commit to a national human rights legislative framework, it is crucial that the Agreement bring a human rights focus. First, the PC must identify where human rights issues are occurring in different parts of the system, and ensure that the Agreement identifies and responds to this. Second, it must ensure that a human rights lens is taken over existing initiatives so that increased access to support is not used to legitimate an increase in the use of coercion or forced access to unsafe (including culturally unsafe) mental health services.

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<sup>1</sup> Recommendation 4.6: Productivity Commission, *Interim Report - Mental Health and Suicide Prevention Agreement Review* (Productivity Commission, June 2025).

<sup>2</sup> For an important account, see: Maria Katsonis, *Submission to the Productivity Commission: Mental Health and Suicide Prevention Agreement Review (Interim Report)* (July 2025) <<https://www.linkedin.com/feed/update/urn:li:activity:7355397290473279488/>>.

<sup>3</sup> *Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights*, GA Res 48/134, UN Doc A/RES/48/134 (20 December 1993, adopted 20 December 1993) annex.

<sup>4</sup> Australian Human Rights Commission, *Road Map to OPCAT Compliance* (Australian Human Rights Commission, 2022) <[https://humanrights.gov.au/sites/default/files/opcat\\_road\\_map\\_0.pdf](https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf)>.

<sup>5</sup> In Victoria, the Royal Commission into Victoria’s Mental Health System had sought to resolve this tension by keeping the monitoring and enforcement functions within the Mental Health and Wellbeing Commission, while providing Regional Mental Health and Wellbeing Boards with key commissioning functions. However the Victorian Government has since withdrawn

its support for Regional Boards: Broede Carmody and Kieran Rooney, 'Victoria Shelves Key Mental Health Pledge, despite Royal Commission Promise', *The Age* (online, 11 October 2024) <<https://www.theage.com.au/politics/victoria/victoria-shelves-key-mental-health-pledge-despite-royal-commission-promise-20241010-p5khdm.html>>.

<sup>6</sup> For a greater overview the Productivity Commission is welcome to access the *Understanding Mental Health Commissions in Australia* course free of charge:

<https://rightsinmind.thinkific.com/courses/commissions>

<sup>7</sup> Penelope Weller, 'OPCAT Monitoring and the Convention on the Rights of Persons with Disabilities' (2019) 25(1) *Australian Journal of Human Rights* 130; Christopher Maylea, 'Does New Mental Health Legislation in Victoria, Australia, Advance Human Rights?' (2023) 25(1) *Health and Human Rights* 149; Chris Maylea and Asher Hirsch, 'The Right to Refuse: The Victorian Mental Health Act 2014 and the Convention on the Rights of Persons with Disabilities' (2017) 42(2) *Alternative Law Journal* 149; Committee on the Rights of Persons with Disabilities, *General Comment No. 1, Article 12: Equal Recognition before the Law*, (UN Doc. CRPD/C/GC/1 (19 May 2014), 2014) 1.

<sup>8</sup> Chris Maylea et al, 'Consumers' Experiences of Rights-Based Mental Health Laws: Lessons from Victoria, Australia' (2021) 78 *International Journal of Law and Psychiatry* 101737 ('Consumers' Experiences of Rights-Based Mental Health Laws').

<sup>9</sup> Simon Katterl et al, *Not before Time: Lived Experience-Led Justice and Repair (Advice to the Victorian Mental Health Minister)* (January 2023)

<[https://static1.squarespace.com/static/64509ef54c074f6f4dfb7138/t/648ed6db5216c12186d165f3/1687082792810/Not+Before+Time+-](https://static1.squarespace.com/static/64509ef54c074f6f4dfb7138/t/648ed6db5216c12186d165f3/1687082792810/Not+Before+Time+-+State+Acknowledgement+of+Harm+2023+FINAL+ADVICE.pdf)

+State+Acknowledgement+of+Harm+2023+FINAL+ADVICE.pdf>; Richard Willingham,

'Mistreated Victorian Mental Health Patients Should Be given Compensation and a Public Apology, Report Finds - ABC News', *ABC News Online* (online, 13 June 2023)

<<https://www.abc.net.au/news/2023-06-13/mental-health-mistreatment-calls-for-redress-apology/102468454>>.

<sup>10</sup> Simon Katterl and Chris Maylea, 'Keeping Human Rights in Mind: Embedding the Victorian Charter of Human Rights into the Public Mental Health System' (2021) 27(1) *Australian Journal of Human Rights* 58.