



## Submission to the Education and Health Standing Committee: Inquiry into the Esther Foundation and unregulated health facilities

This submission has been prepared by the WA Network of Alcohol and other Drug Agencies (WANADA) and the WA Association for Mental Health (WAAMH).

### Acknowledgement of Country

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WANADA and WAAMH acknowledge the traditional custodians of Country on which this submission was developed, the Whadjuk people of the Noongar Nation. We acknowledge their continuing and unbroken connection to land, sea and community. We pay our respect to their culture and their Elders, past and present and acknowledge their ongoing contribution to WA society and the community.

### Recognition of People with Lived Experience

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We recognise the individual and collective expertise of people with a living or lived experience of mental health, alcohol and other drug issues, and the families and carers who provide support and have a lived/living experience. We recognise the vital contribution and value the courage of individuals who have shared their perspectives and personal experiences for the purpose of learning and growing together to inform mental health and alcohol and other drug systems and a wider community that can achieve better outcomes for all.

### About WANADA

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The Western Australian Network of Alcohol and other Drug Agencies (WANADA) is the peak body for the specialist alcohol and other drug education, prevention, treatment and support sector in Western Australia. WANADA is an independent, membership-driven, not-for-profit association.

WANADA is driven by the passion and hard work of its member organisations, which include community alcohol and other drug counselling; therapeutic communities; residential rehabilitation; intoxication management; harm reduction; peer based; prevention; and community development services.

### About WAAMH

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The Western Australian Association for Mental Health (WAAMH) is the peak body for the community managed (non-government) mental health sector in Western Australia, with more than 80 organisational and over 130 individual members across metropolitan and regional WA.

WAAMH's membership comprises community managed organisations providing mental health services, programs or supports, and individuals and families with lived experience of mental health issues and suicide, with whom WAAMH engages in genuine partnership.

Community-managed organisations provide a critical network of services that support people affected by mental ill-health and their families, and help them live valued lives in their community.

WAAMH has been engaged in the mental health sector for more than 50 years. We advocate for effective public policy on mental health issues, deliver workforce training and sector development, hold events for the

sector and the wider community, promote positive attitudes to mental health and recovery and undertake projects to deliver outcomes in a range of areas including employment, the NDIS, supported accommodation, youth mental health, community sport and mental health and mental health support in regional and remote areas.

## Overview

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WANADA and WAAMH welcome the opportunity to provide a submission to the *Standing Committee Inquiry into the Esther Foundation and Unregulated Health Facilities*. We would welcome presenting to the Committee to expand on the below submission, which focusses specifically on Terms of Reference 3:

3. Current regulatory and legislative provisions, and those proposed provisions currently before the Parliament, to address the above concerns, including:
- a. Options for regulating facilities not covered by the definition of 'Health Service' or 'Hospital' in the Private Hospitals and Health Services Act 1927.

Government operated and commissioned services currently meet a small proportion of community demand for alcohol and other drug and mental health treatment and support services<sup>1</sup>. Historically, significant rates of unmet community need have provided an opportunity for the establishment of a range of unregulated organisations to address demand issues. Organisations that do not receive government funding are not accountable or required to demonstrate safe, evidence-informed practice. The practices of these unregulated services have impacted on community confidence in the broader sectors. While there are not enough accountable services to meet demand, there is a need for community awareness of the quality they should be able to expect from specialist services.

**Western Australians must have confidence in the quality of treatment and support services being delivered across the State, irrespective of whether these services are funded privately or via state or federal government commissioning.**

A recognised strength of many sectors is having a diversity of services, service models and settings to best address a broad range of community needs and circumstances<sup>2</sup>. This diversity, however, must be fundamentally underpinned by a consistent and balanced approach to quality and accountability.

The *National Quality Framework for Drug and Alcohol Treatment Services* outlines quality as encompassing<sup>3</sup>:

- **organisational governance** – establishment of a systematic approach to organisational governance
- **clinical governance** – establishment of accountability of individuals for the delivery of safe and effective quality care
- **planning and engagement** – planning and engagement to meet and be adaptable to client (service user) and community needs
- **collaboration and partnerships** – partnerships are established to improve and focus on client centred care
- **workforce, development and clinical practice** – organisations engage and maintain a workforce that has appropriate qualifications, skills, knowledge and supervision
- **information systems** – secure and effective information systems to meet organisational objectives and inform decision making
- **compliance** – protect clients by meeting legislative, regulatory and professional obligations

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<sup>1</sup> The *Western Australian Mental Health, Alcohol and Other Drug Services Plan 2015-2025* indicates that significant service expansion is required to address modelled community need by 2025.

<sup>2</sup> In 2020-21, 98 non-government agencies were funded by government to deliver alcohol and other drug treatment; 10 were in government agency settings – see AIHW (2022) Alcohol and other drug treatment services in Australia: early insights.

<sup>3</sup> Australian Government Department of Health (2018)

- **continuous improvement** – continuous improvement is a systematic ongoing effort
- **health and safety** – provide a safe and comfortable environment consistent with client and staff needs and regulatory requirements.

We recognise that there are a range of mechanisms currently in place to ensure quality service delivery in Western Australia. These have been complemented by significant sector-driven efforts to establish and enhance a focus on continual quality improvement. There remains, however, gaps in quality regulation for services not funded by government.

Efforts to ensure quality assurance, including regulation, need to target the known gaps in the current arrangements, so that there is a common expectation for continual quality improvement and accountability. A targeted and efficient approach is needed to avoid duplication, specifically for services funded by government.

We recognise the challenges of quality regulation, given it impacts multiple sectors. These challenges are compounded by organisations potentially re-labelling the services they provide (e.g. treatment, support, life control, coaching, discipline school). The design and implementation of any regulatory framework would require significant consultation across affected sectors, to ensure it addresses quality and accountability requirements, builds community confidence, and is appropriately targeted.

## Recommendations

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1. The State Government implements whole-of-government direction to ensure that:
  - a. it is a requirement of all State Government service commissioning and grant funding that services meet relevant sector specific quality requirements
  - b. all State Government agencies and programs only provide referrals to services that are meet accountability measures through current government commissioning or are comparably regulated.
2. The State Government support national coordination to ensure federally commissioned services, or those receiving federal grants, meet sector-specific accountability requirements.
3. The State Government progress regulation of mental health and alcohol and other drug services not funded by government, though:
  - a. amending the Private Hospitals and Health Services Act 1927 (WA) to enable services requiring licencing to be prescribed through regulation
  - b. developing service definitions in consultation with the sector, along with sector-specific quality requirements
  - c. developing and resourcing a fit for purpose licencing and regulatory body with the powers and capabilities to licence and regulate prescribed services not funded by government.
4. The State Government partners with the alcohol and other drug and mental health sectors to promote quality service delivery to the community.

## History of Quality in the Mental Health, Alcohol and other Drug Sectors

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The broader alcohol and other drug sector has a significant history of investment in continual quality improvement, most of which has been driven by WANADA as the peak body. This process has supported organisations to deliver safe, evidenced and accountable services. A summary of quality development in the alcohol and other drug sector is at **Attachment A**.

Community mental health services have a long history of being evaluated against national quality standards. An overview of the quality arrangements for the community managed mental health sector is at **Attachment B**.

## Current quality arrangements, regulation and opportunities

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WANADA and WAAMH supports the common understanding of regulation as “sustained and focused control exercised by a public agency over activities that are valued by the community”. This includes the enforcement of promulgated rules and regulations with respect to relevant legislation and any standards, accreditation, certification, licensing<sup>4</sup> and compliance measures that need to be met.<sup>5</sup>

### **Alcohol and Other Drug Services Quality and Treatment – National Direction, State Implementation**

In 2018-19 federal, state and territory governments, including Western Australia, endorsed the *National Quality Framework for Drug and Alcohol Treatment Services* and the *National Treatment Framework for Alcohol, Tobacco and Other Drug Treatment 2019-2029*. These frameworks had been commissioned in response to federal inquiry recommendations and subsequent national policy commitments (*National Ice Action Strategy*) which recognised the importance of quality service delivery and public accountability.

The development of the National Quality Framework recognised the value of alcohol and other drug treatment to the community and sought to establish a nationally consistent quality benchmark which consumers can expect from treatment providers<sup>6</sup>. The National Quality Framework requires all alcohol and other drug treatment providers, irrespective of funding source, to be certified against a recognised standard from 29 November 2022. Eight independently accredited certification standards were identified as relevant. These requirements have been incorporated into service agreements from the Mental Health Commission and WA Primary Health Alliance (the primary commissioning bodies for alcohol and other drug treatment in Western Australia).

State and territory governments are stated within the National Quality Framework as having the primary responsibility for alcohol and other drug treatment regulation, with the Commonwealth “providing sector leadership, leading national policy, and contributing to sector funding”<sup>7</sup>.

The National Treatment Framework defines the key elements that make up the alcohol and other drug treatment system, including interventions, settings, treatment principles, and systems principles related to service planning and commissioning, and monitoring and evaluation.

The National Treatment Framework provides a definition for alcohol and other drug treatment, which can inform state and territory jurisdiction activity to define and regulate treatment quality:

*Structured health interventions delivered to individuals (by themselves, with their families, and/or in groups) to reduce the harms from alcohol, tobacco, prescribed medications or other drugs and improve health, social and emotional wellbeing*<sup>8</sup>.

### **Regulation of Quality and Standards in community managed non-government mental health services**

There is a network regulatory structure that provides regulatory oversight<sup>9</sup> of non-government mental health services (both not-for-profit agencies and for-profit businesses) funded by State or Federal government in WA. This involves multiple agencies with some shared and overlapping regulatory responsibilities for

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<sup>4</sup> For the purpose of this submission, we use the following terms: Licensing (awarded by a Federal or State Government agency, a license provides authority to an agency to deliver services based on pre-determined or defined criteria or standards). Accreditation and Certification (when a facility or service is independently assessed as meeting, or surpassing pre-defined standards or requirements set by an approved body)

<sup>5</sup> Katterl S (2021), The importance of motivational postures to mental health regulators: Lessons from Victoria’s mental health system in reducing the use of force, *Australasian Psychiatry*, 1-4, 2021.

<sup>6</sup> Australian Government Department of Health (2018) *National Quality Framework for Drug and Alcohol Treatment Services*, p.5

<sup>7</sup> Ibid, p.6.

<sup>8</sup> Australian Government Department of Health (2019) *National Treatment Framework for Alcohol, Tobacco and Other Drug Treatment 2019-2029*, p.4

<sup>9</sup> Katterl S (2021a), Regulatory oversight, mental health and human rights, *Alternative Law Journal*, 46(2) June 2021.

licensing, accreditation, and monitoring of compliance of mental health service standards, including the: Mental Health Commission; Licensing and Regulatory Unit within the WA Health Department; the Office of the Chief Psychiatrist; Mental Health Advocacy Service; and Health & Disability Complaints Commissioner. Further discussion of their respective roles is at **Attachment B**.

There is an opportunity to establish a principles-driven unifying mechanism for ensuring the oversight, accountability, and quality of care for people who are clients of private unregulated mental health services.

A common and recurring theme within Royal Commissions and inquiries into mental health, aged care, disability services, institutional responses to child abuse and financial services has been the need to establish improved regulatory oversight to protect the rights and wellbeing of vulnerable people. These various inquiries point to a need to enhance a proactive approach to monitoring and compliance, enforcement, and action that holds services to account for quality, safety, evidence-based practice and human rights. There are currently no requirements for private or non-government mental health facilities that receive no government funding to be licensed, regulated or monitored using the standards or frameworks applied to other mental health services.

One of the challenges facing the mental health regulatory system is that it primarily focuses on services that receive public funding to provide mental health treatment, care and support. As is the case with the alcohol and other drug system, mental health services that do not receive government funding are not captured within existing quality regulation.

The emerging points to the following principles below are important to guide mental health regulatory systems into the future:<sup>10</sup>

1. Regulatory oversight bodies should have a clear mandate to protect human rights and drive compliance with mental health laws and standards
2. Regulatory oversight should be geared towards ensuring human rights compliance by services who provide care and support to people experiencing mental health issues
3. Regulatory bodies need to provide standards and indicators for compliance that provide instructive guidance for services on how laws and regulations can apply in particular contexts
4. Regulatory bodies need to utilise a full range of enforcement activities and take action against non-compliant providers
5. Regulatory bodies and processes need to have the powers and mandate to prevent imminent harm and breaches of human rights
6. Regulatory bodies need to be transparent in demonstrating their effectiveness in achieving their core functions and ensuring mental health services protect and promote human rights
7. Regulatory bodies need to provide more public information on complaints, investigations, compliance failures and service data
8. Lived experience leadership and participation needs to be embedded across all parts of the regulatory system
9. Consumers of mental health services, their carers, family members and people with lived experience need better access to information about the performance and quality of services
10. Consumers of mental health services, their carers, family members and people with lived experience need to be supported and enabled to be 'bottom up' regulators of their own care and support, and able to provide 'on the ground' advice to regulators.

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<sup>10</sup> These draw on the work of Simon Katterl. Katterl S, (2021) The importance of motivational postures to mental health regulators: Lessons from Victoria's mental health system in reducing the use of force, *Australasian Psychiatry*, 1-4, 2021; Katterl S & Maylea C, (2021) Keeping human rights in mind; embedding the Victorian Charter of Human Rights into the public mental health system, *Australian Journal of Human Rights*; Katterl S, (2021a) Regulatory oversight, mental health and human rights, *Alternative Law Journal*, 46(2) June 2021.

## **Current service commissioning and quality arrangements for alcohol and other drug and mental health services**

State and federal government agencies plan and commission alcohol and other drug treatment, and mental health services include:

- Western Australian Mental Health Commission
- Western Australian Primary Health Alliance
- Western Australian Department of Justice
- Australian Government Department of Health
- Australian Government Department of Social Services
- National Indigenous Australians Agency

Commissioning practices within government agencies incorporate differing levels of quality consideration.

For example, our understanding of the incorporation of quality within commissioning practices by the WA Mental Health Commission include:

- consideration of facility suitability as part of the service commissioning process
- contractual requirement for treatment services to have, and maintain, certification against a relevant quality standard:
  - o alcohol and other drug treatment service standards as prescribed by the National Quality Framework
  - o National Mental Health Standards are required for non-government mental health services
- non-government mental health services are also expected to align their practices with the six Mental Health Outcome Statements across the services they provide. Accreditation against the Mental Health Outcome Statements are no longer required, however these still form part of the service agreement with the Mental Health Commission, and align with the requirements of the National Mental Health Standards
- accountability requirements, including appropriate notifiable incident reporting. Some mental health non-government organisations are also required to report notifiable incidents to the Office of the Chief Psychiatrist and the Licensing Accreditation and Regulatory Unit
- regular reporting, monitoring and contract review processes.

The percentage of Mental Health Commission commissioned non-government mental health or alcohol and other drug services that met an approved standard in 2021-22 was 98.7%<sup>11</sup>

The WA Primary Health Alliance similarly requires quality standard certification of commissioned services.

WANADA has worked with other State Government agencies, significantly the Department of Justice, regarding the requirement to adhere to the National Quality Framework by 29 November 2022. Feedback has been positive, and there is recognition of the importance of quality requirements extending to government programs which facilitate referrals to alcohol and other treatment services.

There is a need to establish a more consistent approach across state and federal commissioning bodies regarding the incorporation of quality requirements in sector specific service commissioning processes. This approach would complement targeted regulatory action to address quality concerns of services not receiving government funding.

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<sup>11</sup> Western Australian State Government (2022) Western Australian State Budget 2022-23, Budget Paper No.2, Volume 1, p.342.

**Recommendation 1:** The State Government implements whole-of-government direction to ensure that:

- a. it is a requirement of all State Government service commissioning and grant funding that services meet relevant sector specific quality requirements
- b. all State Government agencies and programs only provide referrals to services that meet accountability measures through current government commissioning or are comparably regulated.

**Recommendation 2:** The State Government support national coordination to ensure federally commissioned services, or those receiving federal grants, meet sector-specific accountability requirements.

### **Establishing Accountability Requirements for Services not Funded by Government**

We believe that a specific regulatory focus is required to address services that are not funded by government. We recognise that the *Private Hospitals and Health Services Act 1927 (WA)*, nor associated regulation, currently prescribes the power to regulate these services.

There is an opportunity to implement targeted, efficient and effective reform through: amendments to the Act, associated regulation, and the establishment of a fit for purpose licencing and regulation agency for community health and social services. This reform will reduce considerable health and wellbeing risks, and support accountability, safety, quality and build community confidence in the broad alcohol and other drug and mental health sectors.

Given the need to accurately target regulation and reform, as well as ensure flexibility to address changing circumstances and practices, it is important that the following are progressed in close consultation with all impacted sectors:

- **Amend the *Hospitals and Health Services Act 1927 (WA)*** – To support flexibility and sustainability, we support amendments to the Act that enable regulation to prescribe the services captured by licencing and regulation requirements
- **Develop regulation** – in consultation with impacted sectors, we support the development regulation that includes specific service definitions.
  - o In the case of the alcohol and other drug sector, this would capture: organisations not in receipt of government funding that deliver treatment as per the National Treatment Framework. These services would be required to maintain certification against a standard listed in the National Quality Framework.
- **Establish a fit for purpose regulatory approach** – The licencing, monitoring and regulation of treatment and support services not receiving government funding will require the establishment of a fit for purpose regulatory body. This body will need sufficient scope, capabilities and resourcing to effectively and efficiently regulate a diversity of community health and social services and facilities/settings. This scope should also ensure a coordinated response to investigating complaints by users of services not funded by government. We would welcome working in partnership with the State Government in the design and implementation of such as body.

**Recommendation 3:** The State Government progress regulation of mental health and alcohol and other drug services not funded by government, though:

- a. amending the *Private Hospitals and Health Services Act 1927 (WA)* to enable services requiring licencing to be prescribed through regulation
- b. developing service definitions in consultation with the sector, along with sector-specific quality requirements
- c. developing and resourcing a fit for purpose licencing and regulatory body with the powers and capabilities to licence and regulate prescribed services not funded by government.

## **Supporting Community Confidence**

The reputation of the quality alcohol and other drug and mental health sectors has been significantly impacted by the practices of unregulated services. It is important that there is shared effort to support enhanced community confidence in, and awareness of, quality mental health and alcohol and other drug services.

**Recommendation 4:** The State Government partners with the alcohol and other drug and mental health sectors to promote quality service delivery to the community.

## The History of Alcohol and Other Drug Service Sector Quality

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In recognition of the importance of accountability and evidence-based practice, the alcohol and other drug sector has significantly invested in in service quality for many years. These efforts have resulted in a number of developments.

In 1984 the inaugural meeting of WANADA identified service quality as a sector priority.

In 2001 the **Western Australian Community Drug Summit** recommended that specialist alcohol and other drug agencies and services are required and supported to continuously improve (Recommendation 30).

In 2005 the **Western Australian Alcohol and Other Drug Sector Quality Framework** (WA Quality Framework) was developed in partnership between the alcohol and other drug sector, the then Western Australian Drug and Alcohol Office, and WANADA. It was informed by service users, service workers and leaders, board and governance directors, community members and all relevant state and commonwealth funding bodies. This initiative was in response to the Western Australian Community Drug Summit, a subsequent AOD sector Accreditation Working Party (2003), and national and state direction in safety and quality in health care. The WA Quality Framework provided a model of continual quality improvement to assist program and service development to better meet the needs of consumers and improve outcomes. The model acknowledged the consumer - defined to encompass individuals, families and communities - and their participation in aspects of organisational activity, as central to the processes of continual quality improvement. Implementation of the WA Quality Framework at alcohol and other drug services throughout Western Australia increased sector understanding of the principles of continuous quality improvement and enabled significant barriers to quality improvement to be identified and addressed. The WA Quality Framework was embraced by the sector as an incremental and developmental program, where services undertake self-assessment followed by peer review.

The WA Quality Framework was written into alcohol and other drug service agreements with organisations funded by the Drug and Alcohol Office in October 2004, requiring all organisations to actively engage in the quality framework process. The implementation of the WA Quality Framework provided community and funding body confidence, resulting in significant expansion of the sector.

In response to an identified need for an industry-specific certification standard, the WA Quality Framework was further developed in consultation with the Western Australian alcohol and other drug sector and Aboriginal and Torres Strait Islander alcohol and other drug services Australia-wide. This resulted in the **Standard on Culturally Secure Practice (Alcohol and other Drug Sector)** (August 2012). In addition to being industry specific, the Standard contained all of the elements of a quality management system standard (like ISO 9001) and was flexible enough to be applied by services that offer a diverse range of programs to meet identified service user needs. The Standard was registered with the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) and was supported by the WANADA Scheme which lays down the requirements for auditing against the Standard. Certification required independent auditing to ascertain compliance, with annual audits to maintain certification.

The inclusion of cultural security aspects within the Standard represented a significant shift in quality service standards of the time. The Standard on Culturally Secure Practice was subsequently implemented by a range of organisations based in metropolitan, regional, rural and remote Western Australia as well as other states. These included: mainstream and Aboriginal community-controlled organisations; adult, youth and other population specific services; and organisations delivering alcohol and other drug and other human services. Participating service types included: residential rehabilitation and therapeutic communities; non-residential counselling; withdrawal management (including home-based); harm reduction; peer support; sobering-up shelters; medical services; outreach; community development and prevention; and supported accommodation.

In 2018 and 2019 WANADA coordinated a **review of the Standard on Culturally Secure Practice** and the accompanying certification Scheme. The review was overseen by a steering group of representative stakeholders and was informed by extensive consultation with the Western Australian alcohol and other drug sector, accreditation and certification bodies, funding bodies, Aboriginal Elders, researchers and other interested parties.

An environment of increased awareness of the importance of clinical and practice governance was a key driver for the revision. This included the need to strengthen: consumer and community engagement; approaches to enhanced community confidence in services; cultural responsiveness; organisational capacity to deliver safe, quality and evidence informed services; approaches to enhanced worker wellbeing; and organisational leadership and culture.

The review resulted in a more concise, robust and contemporary second edition: the **Alcohol and other Drug and Human Services Standard**. The Standard is a quality management system standard with a strong focus on culturally responsive and evidence informed ways of working, that is flexible enough to be applied by a diverse range of human services.

The Alcohol and other Drug and Human Services Standard has maintained and enhanced requirements for:

- ensuring the service is focussed on responding to community needs and expectations
- the communication and comprehension of consumer rights and responsibilities including privacy, respect, inclusion, consent and appropriate feedback and complaints mechanisms
- consumer involvement in service planning, development and quality improvement
- a clear evidence-informed service model that meets identified needs of consumers and supported by appropriately qualified and supported staff (including clear codes of conduct, credentials monitoring, supervision, performance appraisals, worker health, safety and wellbeing strategies)
- screening, assessment, service matching, treatment/care planning, case management, shared care, through care and referral processes that maximise access, take a culturally responsive, person-centred and holistic approach, and are cognisant of, and address, multiple co-occurring needs
- collaborative working relationships across services and sectors to enable coordinated case management and shared care, through care and referral which supports the multiple and diverse needs of consumers
- safety and quality systems - clinical/practice governance including clear roles and responsibilities, accountability, risk assessment and management measures, communication protocols and record keeping, and documented policies and procedures
- information and data collection and management
- risk and incident management
- planning, monitoring, measurement and evaluation
- compliance management and monitoring
- quality improvement systems
- leadership responsibility for a safety and quality culture
- governance and accountability.

The Alcohol and other Drug and Human Services Standard intent, as follows, is now articulated in both the Standard itself and the accompanying WANADA Scheme:

Based on the principle that every member of the community has the right to access safe, quality, evidence informed, and culturally responsive services, the intent of the Standard is to:

- support continuous quality improvement at an organisational and sector level
- be flexible to meet the needs of a diversity of human service types
- enhance responsiveness to high-risk individuals and population groups
- provide a comprehensive structure that guides and supports sound clinical/practice governance
- support research translation into practice and development of practice evidence

- enhance viability and sustainability through recognition of service quality and increased community confidence
- improve outcomes for the consumer and the broader community.

Organisations previously certified against the Standard on Culturally Secure Practice have now completed transitioning to the Alcohol and other Drug and Human Services Standard.

The ongoing focus of WANADA since the release of the Alcohol and other Drug and Human Services Standard has been to support services in adopting and using the Standard, as well as progressing specific capability projects designed to enhance co-occurring responses within a continual quality improvement system.

## Regulation of Quality and Standards in the Mental Health System

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Responsible Body	Who regulations apply to
Licensing Accreditation & Regulatory Agency (LARU)	LARU only license facilities that meet the definition of a hostel for the purposes of the Private Hospitals and Psychiatric Hostels Act.  Any agency that operates a private healthcare facility (as defined by the Act) needs to apply for a license. This includes: <ul style="list-style-type: none"> <li>- private hospitals</li> <li>- psychiatric day hospitals</li> <li>- private nursing posts</li> <li>- private psychiatric hostels</li> <li>- private nursing homes</li> </ul>
Mental Health Commission	NGO and private services funded by the Mental Health Commission
Office of the Chief Psychiatrist (OCP)	Public mental health services, private mental health services and non-government mental health services
Health and Disability Services Complaints Office	A complaint can be made by: <ul style="list-style-type: none"> <li>- the person who received the service</li> <li>- a relative, representative or carer</li> <li>- a representative of a person who died</li> <li>- a provider, on behalf of the person who received the service from another provider</li> <li>- a carer</li> </ul>
Mental Health Advocacy Service	Focus is involuntary consumers and residents of private psychiatric hostels
NSIS Safety and Quality Commission	Unregistered providers must comply with the NDIS Code of Conduct and worker screening requirements
Professional bodies and State/Territory Governments	Registered workers (e.g. mental health practitioners including psychiatrists, psychologists and mental health nurses).  Workers identified through relevant codes of conduct.

### **Licensing and Accreditation Regulatory Unit (LARU)**

The Licensing and Accreditation Regulatory Unit (LARU) is the state regulator responsible for the licensing and accreditation of private hospitals and private psychiatric hospitals.

Any agency that operates a private healthcare facility (as defined by the Act) needs to apply for a license. This includes:

- private hospitals
- psychiatric day hospitals
- private nursing posts
- private psychiatric hostels
- private nursing homes.

LARU carries out its responsibilities under the authority of the Private Hospitals and Health Services Act 1927 and the provisions of the Hospitals (Licensing and Conduct of Private Hospitals) Regulations 1987 and the Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997.

An application for a licence is based on the suitability of the:

- licence applicant
- premises for the purpose
- arrangements for management, staffing and equipment.

The Director General of Health must be satisfied that applicants are able to meet all of the above requirements before being granted a private hospital licence.

Applicants must provide a Statement of Function that include information on activities and roles of the facility, including

- the type of hospital or facility
- its geographical location
- the type/s of services/procedures that will be carried out, their complexity and the support services, staff profile and safety standards that will be in place to ensure safe practice
- the number of patients/residents that will be accommodated.

Applicants must provide information about the person/body corporate/firm that is making the application, in accordance with the Licensing Standards for Assessing the Suitability of a Licence Applicant for a Licence of a Private Hospital.<sup>12</sup> The licence applicant must allow Department of Health consultants to assess the suitability of the premises against set standards, including the appropriate building guidelines (refer to type of facility) and provide information in accordance with the Licensing Standards for the arrangements for management, staffing and equipment for the appropriate facility.

### **Mental Health Commission**

The Mental Health Commission (MHC) leads the overarching management of the quality of services, care and support provided by non-government organisations that are funded by the WA Government. This includes:

- undertaking performance monitoring and reporting and evaluation of funded mental health services
- monitoring standards for NGO mental health service providers against the National Mental Health Standards<sup>13</sup> (NSMHS) and AOD service providers against the National Quality Framework for Drug and Alcohol Treatment Services<sup>14</sup>
- monitoring performance, safety and quality of licensing of facilities of funded mental health and alcohol and other drug services
- all non-government mental health services purchased by the MHC are required to report Notifiable Incidents to the MHC within a reasonable timeframe. Some mental health NGOs are also required to report Notifiable Incidents to the Office of the Chief Psychiatrist and the Licensing Accreditation and Regulatory Unit.

The MHC requires all non-government mental health funded by the Mental Health Commission to obtain and maintain external accreditation against a recognised quality standard.

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<sup>12</sup> Government of WA, Department of Health, Licensing and Accreditation Regulatory Unit (2017), *Licensing Standards For Assessing the Suitability of a Licence Applicant or a Licence Holder* <https://ww2.health.wa.gov.au/~media/Files/Corporate/general-documents/Licensing/PDF/standards/Licensing-Standards-Suitable-Licence-Holder.pdf>

<sup>13</sup> The National Standards for Mental Health Services (2017) provides a basis for assessing mental health service delivery, including services delivered by public inpatient facilities, community mental health centres and private sector providers.

<sup>14</sup> Australian Government, Department of Health (2019) *National Quality Framework for Drug and Alcohol Treatment Services*, <https://www.health.gov.au/resources/publications/national-quality-framework-for-drug-and-alcohol-treatment-services#:~:text=The%20Ministerial%20Drug%20and%20Alcohol,transition%20period%20of%203%20years.>

Non-government mental health service providers are required to be accredited against the National Mental Health Standards (NSMHS) through a recognised Certification body. Re-certification is expected every three years before expiration of the previous accreditation.

Non-government mental health services are also expected to align their practices with the six Mental Health Outcome (MHO) Statements through the services and supports they provide to consumers and/or families and carers. Accreditation against the MHO Statements is no longer required; however, they still form part of the Service Agreement with the Mental Health Commission. The Mental Health Outcome Statements also align with the requirements of the National Standards for Mental Health Services.

All non-government mental health services purchased by the MHC are required to report notifiable incidents to the MHC within a reasonable timeframe. Some mental health NGOs are also required to report notifiable incidents to the Office of the Chief Psychiatrist and the Licensing Accreditation and Regulatory Unit.

### **Office of the Chief Psychiatrist**

Under the Mental Health Act 2014 the Chief Psychiatrist has the responsibility to monitor the treatment and care of mental health patients within WA, specifically:

- all voluntary patients being provided with treatment or care by a mental health service;
- all involuntary patients
- all mentally impaired accused required under the Mentally Impaired Accused Act to be detained at an authorised hospital
- all persons referred under the Mental Health Act 2014 for an examination to be conducted by a psychiatrist or an authorised hospital or other place
- all persons under an order under the Mental Health Act 2014 to enable an examination to be conducted by a psychiatrist at an authorised hospital.

The powers invested in the Chief Psychiatrist impose a governance responsibility over any public or licensed private mental health service and other specified agencies that seek to influence the delivery of mental health treatment and care to the Western Australian Community.

The Chief Psychiatrist has adopted the National Standards for Mental Health Services (NSMHS) as the overarching standards relevant to the Mental Act 2014 and developed the Chief Psychiatrist Standards for Clinical Care to support the National Mental Health Standards in WA.

Under Section 507 of the Mental Health act a designated mental health service includes private licensed psychiatric hostels. The OCP undertakes regular monitoring of the treatment and care provided to residents of licensed psychiatric hostels in WA. The OCP monitoring of licensed psychiatric facilities includes only those facilities operating under a private psychiatric hostel license granted by the Licensing and Accreditation Regulatory Unit (LARU). LARU maintains updated information regarding which licensed hostels are in scope for monitoring by the OCP.

The Office of the Chief Psychiatrist discharge its statutory responsibilities whilst ensuring the rights of people with lived experience of mental illness are upheld. Central to these duties is the responsibility for the treatment and care of patients of public and private mental health services, and the monitoring of standards of care delivered throughout the State.

### **Mental Health Advocacy Service**

The MHAS operates under the Mental Health Act 2014 and provides advocacy support to people specified in the Act, including involuntary patients and residents of private psychiatric hostels.

The MHAS is a free service that is independent from hospitals and mental health services. Mental health advocates can help consumers understand their legal rights, express their wishes, and uphold their rights.

## Health and Disability Services Complaints Office

HaDASCO is an independent state government agency providing a resolution service for complaints relating to health, mental health or disability services in Western Australia and the Indian Ocean Territories, covering the public, private and not-for-profit sectors, and prison health services.

Part 19 of the Mental Health Act 2014 specifies that the Health and Disability Services Complaints Office (HaDASCO) is the complaints body to receive complaints from individuals about mental health service providers (service providers).

A complaint can be made by:

- the person receiving the service
- a relative, representative or carer
- a representative of a person who died
- a provider, on behalf of the person who received the service from another provider
- a carer.

Under the *Mental Health Act 2014* mental health service providers are required to implement their own complaints process for investigating any complaint made about the provision of a mental health service.

This is further supported by Principle 13 of the *Charter of Mental Health Care Principles*<sup>15</sup> which provides: A mental health service must provide, and clearly explain, information about legal rights, including those relating to representation, advocacy, complaints procedures, services and access to personal information, in a way that will help people experiencing mental illness to understand, obtain assistance and uphold their rights.

## Other areas of possible regulatory responsibility

### Regulation of Lodging and Boarding Houses

Boarding and Lodging Houses are a low-cost accommodation option for vulnerable populations. In terms of boarding houses WA is the only jurisdiction in Australia that does not regulate the rights and responsibilities of boarders, which has led to legislative and regulatory confusion and poorer housing outcomes for people who reside in lodging accommodation.<sup>16</sup>

Historically, Lodging Houses have been regulated under the *Health (Miscellaneous Provisions) Act 1911 (Health MP Act)* and local government health laws. A lodging house may include accommodation types, such as backpackers' hostel, a house where rooms are rented to six or more unrelated people and crisis accommodation.

Lodging Houses are required to register their premises under the Health (Miscellaneous Provisions Act) Act and are required to meet compliance measures determined by the relevant local government authority under their local laws. Risks to health in lodging houses are managed primarily under the:

- Health (Miscellaneous Provisions) Act 1911 (Part v, Division 2)
- health local laws developed by Local Governments. Lodging Houses are required to be registered with local governments. Most Local Governments have enacted local laws which generally include provisions for
  - o administrative matters and maintenance requirements
  - o administrative matters, such as the requirement to maintain a record of lodgers, number the rooms and keep duplicates of keys

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<sup>15</sup> The Charter of Mental Health Care Principles forms part of the Mental Health Act 2014 and comprises 15 principles that mental health services are required to aspire to when providing treatment, care and support to consumers, their families and carers.

<sup>16</sup> Shelter WA (2020), Boarders and Lodgers, March 18, 2020, <https://www.shelterwa.org.au/boarders-and-lodgers/>

- requirements for lodgers
  - restrictions on use of rooms for overcrowding
  - prescriptive construction and use requirements including for the provision of facilities and their maintenance, minimum floor area, signage, supply of water, furnishings, ventilation, fire prevention, obstruction and locks
- National Construction Code.

### Community Housing Regulation

The Community Housing Regulatory Framework establishes a system of registration and regulation for community housing providers, that is non-government housing providers who provide housing for people on very low, low or moderate income of people with additional needs, such as people with mental health issues or physical, intellectual or other disabilities.

There are over 200 non-government community housing providers in WA. The majority are small, managing less than 10 properties coupled with a small number of large providers managing the majority of the stock in the system. This means that many community housing provider organisations, particularly smaller ones do not self-identify as community housing providers.

The WA Framework is consistent with the National Regulatory System for Community Housing (NRSCH) that applies across all states and territories of Australia, except Victoria and WA. The WA Framework:

- applies an outcomes focused and risk-based approach to monitor and respond to risks that have serious consequences for tenants, funders and investors, community housing assets and the reputation of the sector
- is underpinned by a set of regulatory principles that allows for considered, efficient and effective regulatory practices that are proportionate, accountable, consistent, transparent, flexible and targeted
- is supported by a suite of guidelines and fact sheets that recognise the diverse nature of the sector and provides clarity and certainty for affected parties.

The Framework is managed by the Community Housing Registration Office (CHRO). The CHRO is managed and overseen by the Community Housing Registrar, however its functions are limited to regulatory activities, such as monitoring the compliance of registered providers with the Framework and providing information and advice regarding regulatory requirements and processes.

Currently, there are no strict obligations on housing providers to be registered under the WA Community Housing Regulatory Framework.<sup>17</sup>

However, the Department of Communities prefers to see assets in the hands of registered providers and has the discretion of making registration a precondition for receiving funding or delivering funded government housing services.

Due to the current voluntary nature of registering to be part of the regulatory framework for community housing in Western Australia, many community housing providers question the benefits of being part of the regulatory framework and going through the registration process, which can be expensive and time consuming.<sup>18</sup>

### NDIS Regulation of Unregistered providers

NDIS participants that have 'self-managed' or 'plan-managed' NDIS plans may choose to use an unregistered provider. 'Agency-managed' plans (plans managed by the NDIA) can only use registered providers.

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<sup>17</sup> Shelter WA (2019) Submission to the National Regulatory System for Community Housing Working group on the Review of the National Regulatory System for Community Housing, [https://www.shelterwa.org.au/wp-content/uploads/2019/08/Shelter\\_WA\\_NRSCH\\_Submission.pdf](https://www.shelterwa.org.au/wp-content/uploads/2019/08/Shelter_WA_NRSCH_Submission.pdf)

<sup>18</sup> Shelter WA (2019).

Unregistered providers and their workers must comply with the NDIS Code of Conduct, they must have an effective complaints handling system and they must comply with Worker Screening requirements in each state. Unregistered providers are not audited against the National NDIS Practice Standards and Quality Indicators.<sup>19</sup>

The NDIS Commission can take regulatory action through complaints made against the unregistered provider via the Code of Conduct. This is the only reactive compliance undertaken of unregistered providers.

The NDIS Code of Conduct<sup>20</sup> requires workers and providers delivering NDIS supports and services to do the following in providing those supports and services:

1. Act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions
2. Respect the privacy of people with disability
3. Provide supports and services in a safe and competent manner, with care and skill
4. Act with integrity, honesty and transparency
5. Promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability
6. Take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability
7. Take all reasonable steps to prevent and respond to sexual misconduct.

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<sup>19</sup> NDIS Quality and Safeguards Commission (2021), NDIS Practice Standards and Quality Indicators, Version 4 November 2021.

<sup>20</sup> NDIS Quality and Safeguards Commission (2019), Code of Conduct, Guidance for Workers, March 2019.