

# Mental Health Commission Act 2012 No 13

[2012-13]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Mental Health Commission Act 2012 No 13



New South Wales

An Act to establish and confer functions on the Mental Health Commission; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Mental Health Commission Act 2012*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are:

- (a) to establish the Mental Health Commission of New South Wales for the purpose of monitoring, reviewing and improving the mental health and well-being of the people of New South Wales, and
- (b) to promote the governing principles, and
- (c) to require the Commission and public sector agencies that provide mental health services or are involved in supporting people who have a mental illness to work co-operatively in the exercise of their respective functions.

### 3A Governing principles

- (1) The following are the ***governing principles*** for the purposes of this Act:
  - (a) people who have a mental illness, wherever they live, should have access to the best possible mental health care and support,
  - (b) people who have a mental illness and their families and carers should be treated with respect and dignity,
  - (c) the primary objective of the mental health system should be to support people who have a mental illness to participate fully in community life and lead

meaningful lives,

(d) the promotion of good mental health and the effective provision of mental health services are the shared responsibility of the government and non-government sectors,

(e) an effective mental health system requires:

(i) a co-ordinated and integrated approach across all levels of government and the non-government sector, including in the areas of health, housing, employment, education and justice, and

(ii) communication and collaboration between people who have a mental illness and their families and carers, providers of mental health services and the whole community.

(2) A public sector agency should have regard to the governing principles in exercising its functions.

#### 4 Definitions

(1) In this Act:

**Commission** means the Mental Health Commission of New South Wales constituted by this Act.

**Commissioner** means the Mental Health Commissioner appointed by the Governor under section 6.

**Deputy Commissioner** means a Deputy Mental Health Commissioner appointed by the Governor under section 7.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**governing principles**—see section 3A.

**non-government sector** includes the private sector.

**public sector agency** means any of the following:

(a) a Public Service agency,

(b) a NSW Government agency,

(c) the NSW Police Force,

(d) the Teaching Service,

(e) a local health district or statutory health corporation (within the meaning of the

*Health Services Act 1997*),

- (f) a local council or other local authority,
- (g) any other person or body prescribed by the regulations.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) A reference in this Act to a public sector agency includes a reference to the person who is the chief executive officer (however described) of the agency.
- (3) Notes included in this Act do not form part of this Act.

## **Part 2 Mental Health Commission**

### **5 Constitution of Mental Health Commission**

- (1) There is constituted by this Act a corporation with the corporate name of the Mental Health Commission of New South Wales.
- (2) The Commission is not and does not represent the Crown.
- (3) The Commission has the functions conferred or imposed on it by or under this or any other Act.
- (4) The functions of the Commission are exercisable by the Commissioner, and any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.
- (5) (Repealed)

### **6 Mental Health Commissioner**

- (1) The Governor may appoint a Mental Health Commissioner.
- (2) The Commissioner holds office for the period (not exceeding 5 years) specified in the instrument of appointment and may not be appointed for more than 2 successive terms of office.

**Note—**

Schedule 1 contains ancillary provisions relating to the Commissioner.

### **7 Deputy Mental Health Commissioners**

- (1) The Governor may appoint one or more Deputy Mental Health Commissioners.

- (2) A Deputy Commissioner holds office for the period (not exceeding 3 years) specified in the instrument of appointment and may be re-appointed provided he or she does not hold office for more than 6 years in total.

**Note—**

Schedule 1 contains ancillary provisions relating to Deputy Commissioners.

**8 Commissioner or Deputy Commissioner to have personal experience of mental illness**

The Commissioner or at least one Deputy Commissioner must be a person who has or has had a mental illness.

**9 Ministerial control**

The Commission is subject to the direction and control of the Minister, except in relation to the preparation and contents of any plan or report prepared by the Commission.

**10 Mental Health Community Advisory Council**

- (1) There is to be a Mental Health Community Advisory Council.
- (2) The function of the Council is to advise the Commission on any mental health issue it considers appropriate or that is referred to it by the Commission.
- (3) The Council is to consist of the Commissioner and such persons as are appointed by the Minister (the **appointed members**). The Minister is to consider any recommendations made by the Commission in relation to the appointment of persons to the Council.
- (4) The Minister must ensure that the composition of the Council reflects the diversity of the community and includes representatives of the following groups:
  - (a) people who have a mental illness and their families and carers,
  - (b) mental health service providers,
  - (c) people living in regional and remote New South Wales,
  - (d) culturally and linguistically diverse communities,
  - (e) Aboriginal persons.
- (5) An appointed member is to be appointed to the Council for a period of 3 years or less.
- (6) One of the appointed members of the Council is, by the member's instrument of appointment or a further instrument signed by the Minister, to be appointed as the chairperson of the Council.
- (7) The procedure for the calling of meetings of the Council and for the conduct of those

meetings is to be determined by the Commissioner.

- (8) An appointed member of the Council is entitled to be paid such fees and allowances (if any) as the Minister may from time to time determine for the member.
- (9) The Minister may remove an appointed member from the Council at any time.

## **Part 3 Functions of Commission**

### **11 Commission's work to be governed by the governing principles**

The governing principles are to govern the work of the Commission.

### **12 Functions of Commission**

(1) The Commission has the following functions:

- (a) to prepare strategic plans relating to mental health when directed to do so by the Minister,
- (b) to monitor and report on the implementation of strategic plans prepared by the Commission and approved by the Minister,
- (c) to review and evaluate, and report and advise on, the mental health and well-being of the people of New South Wales including conducting systemic reviews of services and programs provided to people who have a mental illness and other issues affecting people who have a mental illness,
- (d) to promote and facilitate the sharing of knowledge and ideas about mental health issues,
- (e) to undertake and commission research and innovation in relation to mental health issues,
- (f) to advocate for and promote the general health and well-being of people who have a mental illness and their families and carers,
- (g) to educate the community about mental health issues, including for the purpose of reducing the stigma associated with mental illness and discrimination against people who have a mental illness,
- (h) to advocate for and promote the prevention of mental illness and early intervention strategies for mental health,
- (i) such other functions relating to mental health as may be prescribed by the regulations.

(2) In exercising its functions under this Act, the Commission is:



- (a) to focus on systemic mental health issues, and
- (b) to take into account co-morbid issues associated with mental illness, such as drug and alcohol use and disability, and
- (c) to take into account issues related to the interaction between people who have a mental illness and the criminal justice system, and
- (d) to engage and consult with and to take into account the particular views of:
  - (i) people who have a mental illness and their families and carers, and
  - (ii) the government and non-government sectors, and
  - (iii) the whole community, and
- (e) to take into account the particular views and needs of different sections of the community, including Aboriginal communities, culturally and linguistically diverse communities, gay, lesbian, bisexual, transgender and intersex communities, young people and regional and remote communities.

### **13 Special reports**

- (1) The Minister may direct the Commission to prepare a special report on any significant systemic issue affecting people who have a mental illness (not being an issue that relates only to a particular specialist mental health service).
- (2) The Commission may include in a special report a recommendation that the report be made public.
- (3) The Minister may cause a copy of a special report to be provided to the Presiding Officer of each House of Parliament.

### **14 Other reports**

- (1) The Commission may, at any time, prepare a report on any of the following:
  - (a) (Repealed)
  - (b) the implementation of any strategic plan prepared by the Commission and approved by the Minister,
  - (c) a systemic issue relating to the mental health system or affecting people who have a mental illness,
  - (d) the funding of mental health services in New South Wales.
- (2) The Commission is to notify the Minister before preparing a report on a systemic issue referred to in subsection (1) (c).

- (3) In the course of preparing a report on a systemic issue referred to in subsection (1) (c), the Commission is to consult with any public sector agencies and non-government agencies that the Commission considers are significantly affected by the issues contained in the report, including by providing a draft report to, and considering submissions by, the agency.
- (4) The Commission must provide the Minister with a copy of any report prepared under this section and the Minister must cause a copy of the report to be provided to the Presiding Officer of each House of Parliament as soon as practicable after receiving the report from the Commission.
- (5) The Commission may, after a report has been prepared and provided to the Minister under this section, give a copy of the report to the head of a public sector agency and request the head, in writing, to consider either or both of the following:
  - (a) the report or any specified matter in the report,
  - (b) the steps (if any) that the agency has taken, or plans to take, in relation to a particular recommendation in the report.
- (6) The head of a public sector agency to whom a report is given must provide a written response to the Minister within a reasonable time and no later than 6 months after the report is given.
- (7) The response is to address any matters that the head has been requested to consider by the Commission.
- (8) The head of a public sector agency must also provide a copy of the response to the Commission.
- (9) The Commission is to include the response or a summary of the response in its annual report.

#### **14A Staff**

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Commission to exercise its functions.

**Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Commission makes use of) may be referred to as officers or employees, or members of staff, of the Commission. Section 47A of the [Constitution Act 1902](#) precludes the Commission from employing staff.

#### **15 Delegation of Commission's functions**

The Commission may delegate any of its functions, other than this power of delegation, to a Deputy Commissioner or a member of staff of the Commission.

**Note—**

Section 5 (4) provides that the Commissioner acts for the Commission.

## **Part 4 Miscellaneous**

### **16 Co-operation between Commission and public sector agencies**

- (1) It is the duty of the Commission and public sector agencies that provide mental health services or are involved in dealing with people who have a mental illness to work co-operatively in the exercise of their respective functions.
- (2) (Repealed)
- (3) The Commission may enter into arrangements with any public sector agency in relation to the provision by the agency of information that is required by the Commission for the exercise of its functions.
- (4) The Commission may request a public sector agency to provide the Commission with any information held by the agency that is reasonably required by the Commission for the exercise of its functions and the agency must comply with such a request if it is reasonable to do so.
- (5) Any dispute arising between the Commission and a public sector agency about a request for information under subsection (4) is to be resolved between the Minister administering this Act and the Minister responsible for the public sector agency.
- (6) Information provided to the Commission under this section is not to include personal information within the meaning of the [Health Records and Information Privacy Act 2002](#).

### **17 Provisions relating to reports**

- (1) A copy of a report provided to the Presiding Officer of a House of Parliament under this Act must be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (2) If a report includes a recommendation by the Commission that the report be made public immediately, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.
- (3) A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House.
- (4) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied in relation to a report purporting to have been provided to the Presiding Officer in accordance with this Act.

## **18 Personal liability**

A matter or thing done or omitted to be done by the Commission, the Commissioner, a Deputy Commissioner, a member of the Mental Health Community Advisory Council or a person acting under the direction of the Commission or a Council member does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject the Commissioner, the Deputy Commissioner, the member or the person so acting personally to any action, liability, claim or demand.

## **19 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **20 Review of Commission and Act**

- (1) As soon as possible after the period of 5 years from the commencement of this Act, the Minister is to undertake the following reviews:
  - (a) a review of the work of the Commission taking into account the functions of the Commission and the principles governing the work of the Commission,
  - (b) a review of this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The Minister is to undertake a further review of the work of the Commission at least once every 5 years after the first review.
- (3) A report on the outcome of a review under this section is to be tabled in each House of Parliament within 12 months after the end of the relevant 5-year period.

## **Schedule 1 Provisions relating to Commissioner and Deputy Commissioners**

### **1 Basis of offices**

- (1) The office of Commissioner is a full-time office.
- (2) The office of Deputy Commissioner may be a full-time or part-time office.
- (3) The holder of a full-time office is required to hold it on that basis, except to the extent permitted by the Minister.

### **2 Remuneration**

- (1) The Commissioner and any full-time Deputy Commissioners are entitled to be paid:

(a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and

(b) allowances as the Minister may from time to time determine.

(2) A part-time Deputy Commissioner is entitled to be paid such remuneration and allowances as the Minister may from time to time determine.

### **3 Acting Commissioner and Deputy Commissioners**

(1) The Minister may appoint a person to act in the office of Commissioner or the office of Deputy Commissioner during the illness or absence of, or a vacancy in, that office.

(2) A person, while acting in the office of Commissioner or Deputy Commissioner, has all the functions of the Commissioner or Deputy Commissioner (as the case requires).

(3) The Minister may remove a person acting in the office of Commissioner or Deputy Commissioner from that office at any time.

(4) A person acting in the office of Commissioner or Deputy Commissioner is entitled to be paid such remuneration and allowances as are determined by the Minister from time to time.

### **4 Vacancy in office**

(1) The office of Commissioner or Deputy Commissioner becomes vacant if the holder:

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the Governor, or

(d) is removed from office by the Governor under this clause, or

(e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted outside of New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove the Commissioner or a Deputy Commissioner for misbehaviour, incompetence or incapacity.

### **5 Filling of vacancy**

If the office of Commissioner or Deputy Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Effect of certain other Acts**

- (1) The offices of Commissioner and Deputy Commissioner are statutory offices and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to those offices.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of Commissioner or Deputy Commissioner or from accepting and retaining any remuneration payable to the person under this Act as Commissioner or Deputy Commissioner.

## **Schedule 2 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - this Act
  - any Act that amends this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Schedule 3 (Repealed)**