

Submission: Inquiry into the Esther Foundation and unregulated private health facilities

To address the terms of reference for the Inquiry into the Esther Foundation and unregulated private health facilities (the Inquiry), the Mental Health Commission (MHC) outline supporting information below.

1) Complaints and allegations concerning the Esther Foundation including from former residents, staff and volunteers

The Esther Foundation provided a residential recovery program for young women in Western Australia and did not receive funding from the MHC. With the exception of the negative media attention regarding the Esther Program, the MHC was unaware of historical complaints and allegations concerning the Esther Foundation.

2) Adequacy of actions taken by the organisation to address the above concerns

This Inquiry is welcomed as all organisations providing community support services should meet and continue to uphold standards to support the safety and wellbeing of clients accessing services – including a process for complaints management to ensure concerns are assessed in an appropriate manner.

The State Government took immediate action to support existing clients in the services. Through the Department of Communities, the MHC identified an interim service provider, Cyrenian House, to take on the facility previously occupied by Esther Foundation. This service will include support for substance misuse and mental health concerns, transitioning over time to help young women with a range of complex needs, including family violence and homelessness.

3) Current regulatory and legislative provisions, and those proposed provisions currently before the Parliament, to address the above concerns, including:

Each jurisdiction is responsible for development of the necessary legislation to enforce the requirements. The Licensing and Accreditation Regulatory Unit (LARU) is the appointed Regulator for the licensing and monitoring of private healthcare facilities - private hospitals, private psychiatric hospitals, private day hospitals, private psychiatric hostels, private nursing homes (non aged care homes) and private nursing posts in Western Australia.

Accommodation-based mental health services in Western Australia are, as a general principle, regulated by the statutory framework for 'private psychiatric hostels'. The framework comprises obligations arising under the *Private Hospitals and Health Services Act 1927* (PHHS Act), the Private Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997 (WA) and the *Mental Health Act 2014* (MHA 2014 WA).

Mental Health service providers are required to seek licensing if they meet the definition of a Private Psychiatric Hostel which is defined in the PHHS Act as "a private premises in which 3 or more persons who:

- are socially dependent because of mental illness; and
- are not members of the family of the proprietor of the premises, reside and are treated or cared for."

The PHHS Act defines "mental illness" as having the same meaning as in the MHA 2014 WA.

When the MHC procures mental health services that meet the definition of a Private Psychiatric Hostel, the requirement to be licensed through LARU would be included in any Tender Requests.

The lack of powers within the PHHS Act promotes a self-regulatory model within mental health service delivery. The Department of Health advise there is a greater need for a review of the PHHSA and options for legislative and regulatory reform are currently under consideration by Government.

LARU do not license alcohol and other drug service (AOD) residential rehabilitations. An organisation providing both mental health and AOD could technically require licensing, however, the definition in the PHHS Act is difficult to determine without a full examination of the type of services being required.

3)

a) Options for regulating facilities not covered by the definition of 'Health Service' or 'Hospital' in the Private Hospitals and Health Services Act 1927.

The MHC is not a regulator of any services. When procuring services, the following applies to all mental health and AOD providers funded by MHC:

- Accreditation against an agreed standard;
- Compliance with relevant legislation (e.g. MHA 2014 WA) and policies (e.g. National Quality Framework for Drug and Alcohol Treatment Services 2018);
- Bi-annual reporting requirements;
- Financial reporting;
- Contract management;
- Service reviews; and
- Notifiable Incident reporting.

The National Quality Framework for Drug and Alcohol Treatment Services (the Framework) applies to all AOD treatment services, including those that receive government funding and those that do not. To be compliant with the Framework, by 28 November 2022, all AOD treatment services are required to obtain accreditation against at least one of eight accreditation standards listed.

There are no legislative measures available in Western Australia to enforce these requirements. Currently all AOD treatment services receiving government funding are required to be compliant with the Framework and maintain accreditation against one of the nominated standards.

Options for the Framework to apply across services in Western Australia to organisations not in receipt of government funding, would require a regulatory process:

- Establishing new legislation, should it be required, to ensure compliance of the Framework;
- Establishing a regulatory body, should it be required, to monitor compliance with the Framework; and
- AOD providers not in receipt of government funding having to maintain ongoing compliance and accreditations requirements, should it become a requirement.

This lack of regulation allows for the operation of AOD treatment services not funded by government without oversight of safety and quality requirements, which poses risks to consumers accessing these services and potentially undermines community confidence in this sector.