**Roads to Recovery: 10 themes that must be considered by Victoria’s Royal Commission into Mental Health**

**Submission to the Consultation on the Royal Commission into Mental Health Terms of Reference**

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# Executive Summary and Recommendations

Victoria Legal Aid congratulates the Victorian Government for establishing Australia’s first Royal Commission into Mental Health (**RCMH**).

The RCMH is a critical opportunity to look at a system that is not currently working to support people’s personal recovery. At its best, the RCMH has the potential to help shape Victoria’s laws, policies, services and culture into a system that protects and promotes the rights of Victorians experiencing mental health issues or mental distress. It has the potential to inform and build a system that supports people's choices and their recovery in ways that enable them to live the best lives they can, as determined by them.

## A critical opportunity for consumer-led, system-wide reform

Recognition of the importance of consumer co-production and leadership should be at the foundation of the RCMH and the system it helps redesign. Consumers must be engaged to shape and have influence over the RCMH process and outcomes, and the reformed mental health system that emerges.

The RCMH presents an opportunity for a review of the experiences of consumers of mental health services before, during and after their engagement with the mental health system. To make sure this happens, we encourage the Government to include within the scope of the RCMH a review of the way mental health services interact – or should interact – with other services and systems.

By way of example, through our work, VLA sees the way in which lack of access to housing, disability services, employment, income support, therapeutic services and mental health services in the community can contribute to escalating issues, which can include family breakdown, criminal offending or hospitalisation. Once people have entered these crisis-based systems, their exit, reintegration and/or recovery is again dependent on access to adequate housing and supports in the community. The RCMH presents a critical opportunity to understand the ways in which these, and other, systems could work together more effectively to deliver better outcomes for individuals and the Victorian community. One overarching comment about how the RCMH approaches its task is that it must consider system-wide context and reform. We caution against a narrow review of the mental health system or one that replicates the silos of the current service system, which will not present the same opportunity for positive change.

The scope of the RCMH should be informed by social determinants of mental health and be framed within a social model of health rather than a purely medical model. In our view, the proposed themes presented as part of the ‘Royal Commission into Mental Health Terms of Reference Consultation’ online engagement do not offer sufficient scope to deliver the much-needed system-wide reform (and risk reinforcing existing silos) and we commend you for consulting outside these parameters.[[1]](#footnote-1)

## Our perspectives and recommendations

VLA’s position and recommendations have been informed by:

* + VLA’s specialist legal and non-legal expertise in the mental health system via our Mental Health and Disability Law service, and our non-legal Independent Mental Health Advocacy (**IMHA**) service. This expertise includes direct knowledge of consumer experience.
  + The views of members of our advisory group of consumer experts, *Speaking from Experience*.
  + VLA’s direct experience of the flow-on effects of the gaps in the mental health system, which are apparent through our work in summary crime, indictable crime, child protection, family law, family violence, discrimination, social security, tenancy and legal help for people in prison.

Informed by this work and these perspectives, we would like to see Terms of Reference (**TOR**) that allow for the system to be reimagined. The current mental health system is not broken; it is poorly designed. Rather than try to “fix” the system as it is currently conceived, we should be moving toward a social model of health, designed with people with lived experience of mental health issues.

In reimagining a new system, we should not brush past or gloss over the harm people have experienced through the current system. We must listen to the voices of people who have experienced this system in order to move on from it.

To make sure the RCMH achieves its potential, here are 10 themes that must be within its scope.

## Roads to Recovery: 10 themes that must be considered by Victoria’s Royal Commission into Mental Health

### Consumer leadership and co-production

Consumers – people whose lives are directly affected by the mental health system – should shape and have influence over the process and outcomes of the RCMH. This includes: consumer leadership of the RCMH; processes to ensure that consumers can contribute to and be heard by the RCMH; and embedding consumer leadership in the redesigned mental health system that emerges from the RCMH.

### The regulation of compulsory treatment – rights and recovery

The RCMH provides an opportunity to consider whether the principles and provisions of the Mental Health Act 2014 (Vic) – including a rights-based and recovery-oriented framework for the delivery of treatment and support – are operating as intended and, if not, how to change this.

### Services and supports in the community

The RCMH should consider the availability and appropriateness of services and supports in the community, including mental health and interdependent systems such as rehabilitation services, housing and NDIS.

### Forensic mental health and justice services

The RCMH should consider the way in which the mental health system directly impacts on people’s justice outcomes, including their entry into and exit out of the criminal justice system. This includes early intervention and diversion (including the role of Victoria Police), courts, secure therapeutic facilities, prisons, transition back into the community, and the needs and experiences of young people in the justice system.

### Overlapping life and legal issues

The RCMH should recognise that the experience of mental health issues can contribute to a broad range of legal issues. The existence of these issues – and the stress they bring with them – can also contribute to or exacerbate mental health issues for people. The RCMH should expressly consider the interaction between people’s mental health and the following legal issues and systems: family violence; child protection; family law; discrimination; fines; housing and tenancy; social security; migration law; and guardianship and administration.

### Inpatient services

The RCMH should consider the conditions, physical environment, culture, safety and treatment of people who are hospitalised for their diagnosis or experience of a mental health issue or mental distress.

### Tailored, appropriate, culturally safe services

The RCMH should consider the need for tailored, appropriate and culturally safe services for groups within our community, including Aboriginal and Torres Strait Islander people, CALD communities, LGBTIQ people, older Victorians, women and young people. The RCMH’s consideration of the service needs of these priority groups should be informed by engagement with consumers who are members of these communities.

### Regional issues

The RCMH should consider the way in which a person’s postcode affects the treatment and services available to them.

### Governance, accountability, data and transparency

The RCMH should consider the effectiveness of the current governance, oversight and accountability mechanisms in the mental health system. It should also consider the lack of publicly available data regarding the mental health system, including data on how many people are subject to compulsory treatment, geographical location, age, gender, cultural background, type and length of order, and complaints. Data is critical to service design, evaluation and consumer choice, and essential to ensure accountability.

### Models that work

The RCMH should take a social determinants of health approach, and should encourage evidence and ideas about models that work, including prioritising the expertise of people who have directly experienced the mental health system, and contemplating international best practice.

# Victoria Legal Aid, our clients and consumers, and the mental health system

VLA is an independent statutory agency responsible for providing information, advice and assistance in response to a broad range of legal problems.[[2]](#footnote-2) Working alongside our partners in the private profession and community legal centres, we help people with legal problems such as criminal matters, family breakdown, child protection, family violence, fines, social security, mental health, migration, discrimination, guardianship and administration, tenancy and debt.

Our Legal Help telephone line is a resource for all Victorians to seek information, advice and assistance with legal problems. We also deliver specialist non-legal services, including our Family Dispute Resolution Service and our Independent Mental Health Advocacy service, provide community legal education, and contribute to policy and law reform.

Our contribution to the RCMH will be informed by our work with clients and consumers experiencing mental health issues, including:

* + **Over one-quarter of our clients**. During 2017–18, VLA helped 94,485 unique clients: 11% were in custody, detention or psychiatric care, and 26% disclosed having a disability or mental health issue.[[3]](#footnote-3) While some of this work is specifically within the mental health system, much of it is VLA's other day-to-day work across summary crime, indictable crime, child protection, family law, family violence, discrimination, social security, migration, tenancy and legal help for people in prison.
  + **Specialist mental health legal practice**. The Mental Health and Disability Law program provides advice and representation to people with a mental health diagnosis or cognitive disability. We work to realise people’s rights and autonomy, and to help make sure the justice and health systems operate fairly. In 2017–18, we represented 1046 people before the Mental Health Tribunal, including 772 matters for people with inpatient treatment orders. We also appeared for clients in 93 *Crimes (Mental Impairment and Unfitness to be Tried) Act* 1997 (Vic) hearings in the County Court and Supreme Court, as well as at the Forensic Leave Panel for clients on supervision orders seeking access to leave.
  + **Non-legal advocates and consumer experts**. The Independent Mental Health Advocacy (**IMHA**) service, a non-legal advocacy service, supports people who are receiving compulsory psychiatric treatment to have as much say as possible about their assessment, treatment and recovery. IMHA’s *Speaking from Experience* advisory group is made up of people who have lived experience of mental health issues. IMHA is included in Victoria’s *10-Year Mental Health Plan* as a service that will ‘strengthen a rights-based framework for the delivery of treatment and support, and help embed person-directed assessment, treatment and recovery as the norm for service delivery’. IMHA has been favourably externally evaluated over three years, providing insights into current issues within the mental health system and the importance of advocacy, as well as mechanisms to ensure coordinated oversight and safeguards.[[4]](#footnote-4)
  + **Specialist work in the criminal justice system**. Our Criminal Law program provides specialist support for people whose mental health issues intersect with their criminal law issues. This includes our Therapeutic Courts team, comprising lawyers working in the Assessment and Referral Court (**ARC**) List in the Magistrates’ Court,[[5]](#footnote-5) and our specialist practice with clients who fall under the *Crimes (Mental Impairment and Unfitness to be Tried) Act* 1997 (Vic).

Through this work we see the intersection of the mental health system with people’s other life and legal issues.

It is this work that has informed our recommendations for 10 themes that, in our view, must be considered by the RCMH.

# 10 themes that must be considered by Victoria’s Royal Commission into Mental Health

# Consumer leadership and co-production

### Consumer leadership in establishing the RCMH and its processes and advisory structures

Recognition of the importance of consumer leadership and co-production should be reflected in the RCMH process. This means that consumers – people whose lives are directly affected by the mental health system – will have the opportunity to shape and have influence over the process and outcomes. We recommend a consumer co-chair for the advisory committee, a consumer Commissioner and an advisory group of consumers as crucial parts of the RCMH process.

Government should be mindful of the power imbalance that can exist in relationships (for example, between medical and legal professionals and consumers) and should proactively take steps to counter-balance this in establishing the RCMH and its advisory groups (for example, through avoiding having a solo consumer role, and having key supports in place for any consumer roles). Consideration should also be given to the background of non-consumers, including expertise in trauma-informed practice, the social model of health, and/or human rights.

There should be an opportunity for consumer advice and comment on the draft TOR.

### Consumer participation in the RCMH

Once the RCMH commences, it is vital that individual consumers are able to contribute to the RCMH and be heard, and that there are measures in place to reduce the barriers people will face to participation. This should include access to advice and advocacy, as well as support. The RCMH must proactively reach those who may not otherwise participate, including people in prison or inpatient units. This could include resourcing peak bodies for consumers and carers, and other advocacy and legal services, to provide support for people with lived experience of mental health issues to participate in the process.[[6]](#footnote-6)

### Consumer leadership beyond the RCMH

The TOR should include consideration of the ways in which, beyond the RCMH process, consumer leadership and self-advocacy will be embedded as part of the mental health system and its reform, including opportunities, funding and support for consumer-led services.

# The regulation of compulsory treatment and a focus on people’s rights and recovery

This year, the *Mental Health Act* 2014 (Vic) (**Act**) will have been in operation for five years. The RCMH provides an opportunity to consider whether the principles and provisions of the Act – including a rights-based and recovery-oriented framework for the delivery of treatment and support[[7]](#footnote-7) – are operating as intended and, if not, how to change this.

In particular, the RCMH should consider:

* + The use of compulsory treatment and restrictive practices such as seclusion and restraint, and the rates of this in Victoria relative to other jurisdictions.[[8]](#footnote-8)
  + Fundamental concepts of capacity and informed consent, including as recently considered in relation to compulsory electroconvulsive treatment in *PBU & NJE v Mental Health Tribunal* [2018] VSC 564 (1 November 2018).
  + Training and education for mental health professionals, and development of appropriate systems, to make sure there is genuine understanding and implementation of the Act and its safeguards.
  + The role of – and access to – representation by lawyers or advocates where people are facing compulsory treatment.
  + The impact that limited resourcing for the mental health system has on the ability to fulfil the principles in the Act.
  + The current functioning and impact of safeguard and oversight bodies (see also part 9 below).
  + The reliance on medication and treatment of symptoms, rather than access to talk and other therapies (and diverse professionals to deliver these), who could help address underlying trauma or causes of mental distress.
  + Workforce reform and support required for mental health system reform, including the role and availability of peer workforce staff.
  + Cultural drivers that would ensure a rights-based framework in mental health services and quality improvement, accountability and monitoring mechanisms.
  + The evidence-base regarding the nature and impact of a person’s experience of treatment depending on whether treatment is received voluntarily or compulsorily.
  + The impact of supported decision-making and whether or not the mechanisms under the Act are fully understood and implemented in mental health services.
  + The compatibility of the Act, and how it is implemented in practice, with the United Nations *Convention on the Rights of Persons with Disabilities* (**CPRD**) and the *Charter of Human Rights and Responsibilities Act* 2006 (Vic).

# Services and supports in the community

Through our work, VLA sees that when there is a breakdown in services in the community – in both mental health and interdependent systems, such as rehabilitation services, housing and NDIS – people can end up in crisis, and consequently in an inpatient mental health unit or the justice system. In addition to funnelling people in, people can also become stuck in these systems, including being indefinitely detained (for example, in Secure Extended Care Units (**SECUs**) or Thomas Embling Hospital), because of a lack of support and services to enable discharge back into the community (see also part 4 below).

Recognising this, the RCMH should consider:

* + The availability and appropriateness of:
    - Care and supports for people after leaving acute inpatient services, including flexible ‘step up’ and ‘step down’ options where the service access points are visible and known to consumers so they can take an active role in the direction of their treatment.
    - Housing, therapeutic support, supported decision-making, advocates and free legal assistance for people experiencing mental health issues in the community.
    - Outreach mental health services tailored to individual consumer needs.
    - Services for people on Community Treatment Orders (including, for example, people who work). As one of our staff members said, ‘this treatment should be more than just an injection’.
  + The impact of housing instability and homelessness on treatment and recovery, including the prevalence and impact of discharging people from hospital into rooming houses or onto the streets, and the links to readmission.
  + The opportunities and gaps created by the National Disability Insurance Scheme (**NDIS**) for Victorians experiencing mental health issues and psychosocial disability.
  + Lack of services and supports in the community resulting in long-term detention of people in SECUs or Thomas Embling Hospital.
  + The social determinants of health, including the links between poverty and the inability to access adequate and appropriate mental health services.
  + The gaps between service systems, and the need for a joined-up approach to improving access to housing and services[[9]](#footnote-9) to support people in the community and facilitate people’s transition out of SECUs, Thomas Embling Hospital or prison.[[10]](#footnote-10)

# Forensic mental health and justice services: Mental health assessment and treatment for people in contact with the criminal justice system

In her ‘investigation into the rehabilitation and reintegration of prisoners in Victoria’, the Victorian Ombudsman identified that 40% of the Victorian prison population had been assessed as having a mental health condition and found: ‘Failure to properly treat a prisoner’s mental health condition during their imprisonment will have a significant effect on their rehabilitation and ability to reintegrate into the community’.[[11]](#footnote-11)

During 2017–18, VLA helped 94,485 unique clients. Of these clients, 11% were in custody, detention or psychiatric care; and 26% disclosed having a disability or mental health issue.[[12]](#footnote-12)

Through our work, we see how the mental health system directly impacts on people’s justice outcomes, including their entry into and exit out of the criminal justice system. For example, people without appropriate accommodation may be living in public spaces and may be subject to additional police surveillance. People may be refused bail due to the lack of appropriate accommodation and supports that meet their needs. People in custody may not have access to appropriate treatment and support which may impact their transition back to the community and increase the likelihood of reoffending.

It is essential that the RCMH’s focus on ‘forensic mental health and justice services’ should include explicit consideration of the different ways that access to treatment and supports impacts a person’s interaction with enforcement agencies and justice processes. The RCMH should examine:

* + **Early intervention and diversion away from the criminal justice system**.Ways to reduce the frequency and intensity of contact with the criminal justice system for people experiencing mental health issues, including the role of Victoria Police, and the availability of diversion away from the justice system where conduct is connected with a person’s mental health.
  + **Courts**.
    - The role of therapeutic justice programs, such as the ARC List, the Drug Court, supported bail programs and the Neighbourhood Justice Centre, in increasing access to therapeutic options and supports for people involved in the criminal justice system.
    - Potential benefits of increased geographical reach and timely access to services to support therapeutic justice programs.
    - The availability of mental health assessments for the purposes of criminal proceedings such as fitness to plead, mental impairment and sentencing and the impact on courts, prisons and clients of limited resources for these.
  + **Secure therapeutic facilities**.The shortage of secure therapeutic facilities for mental health treatment for prisoners (whether remanded, sentenced, or found not guilty by reason of mental impairment), including the impact of prolonged detention in prison on people who have been found unfit to be tried on their stabilisation, recovery and wellbeing.[[13]](#footnote-13)
  + **Prisons**.
    - The impact that Victoria’s record number of remandees is having on assessments, access to programs and supports, and access to medication and other treatments, as well as the flow-on effects for people’s recovery and rehabilitation.[[14]](#footnote-14)
    - Growing pressure on prison populations and limited access to treatment facilities contributing to increased use of custodial management techniques that may negatively affect a person’s mental wellbeing while in custody.
    - The failure of treatment options and resources for prisoners to keep pace with the increase in the prison population, one of the effects of which is for those found not guilty by reason of mental impairment to remain in prison for longer periods before being transferred for treatment.
  + **Transition back into the community**. The planning, services and supports that are available to people when they are bailed, paroled or complete their sentence. For example, access to housing, NDIS, case management or holistic support in the community and the impact this has on wellbeing, re-integration into the community and risk of reoffending.
  + **The needs and experiences of young people**. The availability of forensic mental health services for young people experiencing mental health issues, recognising that the Youth Parole Board Annual Report 2017/18 records that 53% of people detained present with mental health issues, and 30% have a history of self-harm or suicidal ideation.[[15]](#footnote-15) Also, issues with the timely completion of assessment, planning and service delivery for young people entering detention, as set out in the 2018 VAGO Report.[[16]](#footnote-16)
  + **Disproportionate impact**. The impact of changes to the justice system on people experiencing mental health issues. For example, people experiencing mental health issues may find it difficult to comply with bail conditions and recent changes to bail laws have introduced more serious consequences for breach of bail conditions.
  + **Training and practice changes**. The availability of, and need for, training for justice agencies – including Victoria Police, Corrections, Courts and Tribunals – to better understand and more effectively engage with people experiencing mental health issues.

We emphasise that any consideration of additional forensic beds needs to be carefully balanced with the RCMH’s consideration of the need for less restrictive alternatives and access to adequate services in the community.

We encourage the Government to see the RCMH as an opportunity to understand and address the additional pressure that defects in the operation of the mental health system (including a lack of housing and services in the community for people experiencing mental health issues) can transfer to the justice system, including Victoria Police, Corrections, the Courts and the legal assistance sector.

# Overlapping life and legal issues

The intersection of the mental health system with the legal system is not limited to criminal justice or the mental health jurisdiction. There are other important examples of interactions between people’s mental health and the legal system which should be considered by the RCMH. The RCMH should examine:

* + **Family violence**. The way mental health is treated in the family violence intervention order system, including how a consistent therapeutic approach can be adopted to ensure best outcomes for all parties. While family violence is ultimately driven by dynamics of power and control between family members, a lack of adequate access to appropriate mental health supports and services in the community for both victim survivors and perpetrators of family violence contributes to increased risk.
  + **Child protection and family law**. The way mental health is treated in the child protection and family law systems, including:
    - Limited understanding of mental health issues in the child protection system, including people and their parenting capacity being pre-judged or assumed to be low.
    - Removal of children or reduction of care because parents – predominantly women – cannot get access to the mental health supports they need.
    - Lack of access to child protection proceedings for people in acute mental health services.
    - The lessons from the Office of the Public Advocate’s report regarding disproportionate rates of child protection removals for parents with disability, including mental health issues.[[17]](#footnote-17)
  + **Discrimination**. The discrimination faced by people experiencing mental health issues, including in employment, service provision and education.[[18]](#footnote-18)
  + **Fines**. The disproportionate impact of Victoria’s fines system on people experiencing mental health issues, including where the person’s mental health issue contributed to the relevant conduct (for example, not having a ticket on public transport or parking longer than allowed).[[19]](#footnote-19)
  + **Housing and tenancy**. The eviction into homelessness of public and community housing tenants due to conduct directly related to a person’s mental health.
  + **Social security**. The high rate of refusal of disability support pension claims due to difficulties with access to mental health services, particularly in regional Victoria.
  + **Asylum seekers**. The risks presented by the lack of adequate access to appropriate mental health services and how this impacts on the ability of asylum seekers to present their claims through the refugee status determination process.
  + **Guardianship and administration**. The impact of the guardianship and administration regime on the rights, autonomy and recovery of people experiencing mental health issues.[[20]](#footnote-20)

The experience of mental health issues can contribute to these legal issues arising. In addition, the existence of these legal issues – and the stress they bring with them – can contribute to or exacerbate mental health issues for people. Each of these issues leads to hardship for individuals and costs for the community, and the RCMH should contemplate whether these issues could be prevented, minimised or more effectively responded to through access to appropriate, holistic mental health services in the community.

The RCMH should also consider the role for early access to legal assistance in preventing these legal issues from escalating, for example, through integrated models of service provision and Health Justice Partnerships.[[21]](#footnote-21)

# Inpatient services: Physical environment, safety and recovery-focus

The conditions, physical environment, culture, safety and treatment of people who are hospitalised for their diagnosis or experience of a mental health issue or mental distress should be expressly identified as a TOR for the RCMH.

In addition to our discussion in part 3 above regarding compulsory treatment and the extent to which the principles of choice, recovery and self-determination captured in the Act exist in practice, we recommend that the RCMH examines:

* + Effective discharge planning (including from SECUs).
  + Physical environment and culture, including thoughtful design, staffing levels and other policies that impact on consumer experience.
  + The operation of SECUs, including the length of involuntary treatment and the long-term impact this has on people’s recovery.
  + Use of violence or unnecessary and disproportionate force by staff and security in inpatient facilities.
  + Treatment and rights of voluntary consumers.
  + The use and impact of coercive practices.
  + The availability – and benefits – of holistic services that address trauma and other social issues, including psychologists, social workers, peer support workers and occupational therapists in clinical services.

# Tailored, appropriate, culturally safe services

The RCMH should be required to consider the need for tailored, appropriate and culturally safe services for groups within our community. Our system must be accessible and responsive to our diverse communities to support recovery. The TOR should include consideration of the needs of:

* + **Aboriginal and Torres Strait Islander people**.
    - The importance of cultural competency to ensure cultural safety, responsiveness and inclusive services.
    - An understanding of government policies that have contributed to trauma, such as the over representation of Aboriginal and Torres Strait Islander children in out of home care.
    - The importance of being trauma-informed and the value of cultural strengthening for healing.
    - The importance of Aboriginal self-determination and of having community inform the RCMH of their needs.
  + **CALD communities**. The availability of, and need for, culturally appropriate services, including interpreters, bicultural workers and approaches that engage with community.
  + **LGBTIQ people**. The availability of inclusive and appropriate services for lesbian, gay, bisexual, transgender, gender diverse and intersex members of the community, and the impact of discriminatory service provision on these groups.
  + **Older Victorians**.The current availability of, and projected need for, mental health services for older Victorians who experience mental health issues and neurological diseases. Also, conditions in aged care psychiatric services (including capacity, use of coercion and rights-based frameworks), particularly in light of Victoria’s ageing population.[[22]](#footnote-22)
  + **Women**.The need for female-only treatment spaces, consistent with trauma-informed practice (noting the Mental Health Complaints Commissioner’s recommendation of gender-specific wards).[[23]](#footnote-23)
  + **Young people**.In addition to access to forensic mental health services discussed above in part 4:
    - Continuity of access to services for young people who turn 21, the impact of being cut off from youth services without adult services or case management planned, and the need for more flexible transition processes (recognising the differential funding levels for adult and youth services, and the experience of service drop-off when adulthood comes).
    - Access to mental health services for young people in state care to prevent homelessness and engagement with the youth justice, and later adult criminal justice, systems.

The RCMH’s consideration of the service needs of these priority groups should be informed by engagement with consumers who are members of these communities.

# Regional issues and inconsistencies across settings

The RCMH should consider the way in which a person’s postcode affects the treatment and services available to them. This should include:

* + Limited access to mental health services in regional areas and the impact this can have, including escalation of mental health issues and associated conduct (for example, offending and family violence), and the impact on people’s recovery (for example, for people in SECUs, this can mean isolation from family and supports and inability to get leave as a result).
  + Limited access to therapeutic courts and differential access to court support services across the State (see also part 4 above).
  + Differences across sites, including the practice of health professionals and the physical environment.
  + The governance structure needed to ensure consistency of practice and consumer experience across regions and services.
  + Zoning of public mental health services, including lack of service choice.
  + Challenges of mental health assessments and decisions by the Mental Health Tribunal made remotely via video-link.
  + Access to specialists to address physical health needs of consumers experiencing mental health issues who are in inpatient units and the community, given the higher morbidity and mortality rates for people with mental health issues who are being treated with medications.

# Governance, accountability, data and transparency

The RCMH should consider the effectiveness of the current governance, oversight and accountability mechanisms in the mental health system. It should also consider the lack of publicly available data regarding the mental health system, including data on how many people are subject to compulsory treatment, geographical location, age, gender, cultural background, type and length of order, and complaints.

Data is critical to service design, evaluation and consumer choice, and essential to ensure accountability.

In particular, the RCMH should consider:

* + The role for publicly available data in helping improve quality and consistency of service provision, as well as informing consumer choice.[[24]](#footnote-24)
  + The role of Victoria’s 10 Year Mental Health Plan in shaping decisions regarding service design and funding.
  + The extent to which consumer feedback, an assessment of rights protection, and a focus on recovery are included in evaluations of service effectiveness.
  + The role and effectiveness of the Mental Health Tribunal in providing oversight and accountability of the system and supporting self-determination.
  + The effectiveness of the current governance and oversight mechanisms, including via the Department of Health and Human Services, the Mental Health Complaints Commissioner, the Office of the Chief Psychiatrist, and Office of the Public Advocate Community Visitors.

# Time for a fundamental shift in our approach to mental health in Victoria – models that work

We recommend that the TOR are framed to encourage evidence and ideas about models that work, including prioritising the expertise of people who have directly experienced the mental health system,[[25]](#footnote-25) and contemplating international best practice. The RCMH should not be limited to considering the effectiveness of what is currently in place.

This is a unique opportunity to reimagine a system developed 30 years ago. A social determinants of health approach, rather than a purely medical approach, should be the lens for the RCMH. This will allow consideration of what is needed in the various systems people with mental health issues are navigating to make these systems effective and sustainable. This should include consideration of the resourcing necessary to implement recommendations and embed the reform they seek to bring about.

1. State Government of Victoria, *Royal Commission into Mental Health Terms of Reference Consultation* (available at: <https://engage.vic.gov.au/royal-commission-mental-health-terms-of-reference>). [↑](#footnote-ref-1)
2. See Victoria Legal Aid, *Annual Report 2017–18* (available at: <https://www.legalaid.vic.gov.au/about-us/our-organisation/annual-report-2017-18>) (**VLA Annual Report**). [↑](#footnote-ref-2)
3. Ibid. This includes clients seen by a private practitioner duty lawyer. Unique clients are individual clients who accessed one or more of Victoria Legal Aid’s legal services. This does not include people for whom a client-lawyer relationship was not formed, who received telephone, website or in-person information at court or at public counters, or participated in community legal education—we do not create an individual client record for these people. Neither does this client count include people assisted by our Independent Mental Health Advocacy service. We note that, because this figure relies on clients disclosing their disability or mental health issue at the time of receiving legal assistance, the actual number of clients experiencing mental health issues is likely to be significantly higher. [↑](#footnote-ref-3)
4. Dr Chris Maylea, Susan Alvarez-Vasquez, Matthew Dale, Dr Nicholas Hill, Brendan Johnson, Professor Jennifer Martin, Professor Stuart Thomas, Professor Penelope Weller, Social and Global Studies Centre, RMIT University, *Evaluation of the Independent Mental Health Advocacy Service (IMHA): Final Report* (November 2018) (**IMHA Evaluation Report**). [↑](#footnote-ref-4)
5. See also Law and Justice Foundation of New South Wales, *In Summary: Evaluation of the appropriateness and sustainability of Victoria Legal Aid’s Summary Crime Program* (June 2017) (available at: <http://www.legalaid.vic.gov.au/about-us/research-and-analysis/summary-crime-evaluation-report>), which identified that, of 14,591 grants of legal assistance made in the review period, 64% related to family violence, mental ill-health and offending-driven by drug addiction. [↑](#footnote-ref-5)
6. We also note the need for the RCMH to consider appropriate whistle-blower protections to encourage those with system experience (including staff, families and carers) to share their experiences of the mental health system without fear of repercussions. [↑](#footnote-ref-6)
7. See, eg, Department of Health and Human Services, *Recovery Library* (available at: https://recoverylibrary.unimelb.edu.au/). [↑](#footnote-ref-7)
8. See Edwina Light et al, ‘Community Treatment Orders in Australia: Rates and Patterns of Use’ (2012) 20(6) *Australasian Psychiatry* 478, 480. Victoria has the highest rate of people subject to CTOs (98.8 per 100,000). This is compared with 61.3 per 100,000 in QLD, 48.6 per 100,000 in WA, 46.4 per 100,000 in NSW, and 30.2 per 100,000 in Tasmania. There was no data available for SA or NT. See also Piers Gooding and Yvette Maker, University of Melbourne, ’Why are the rates of restrictive practices in Victoria’s mental health services so high?’ *Pursuit* (January 2019). [↑](#footnote-ref-8)
9. Including specialist accommodation. See, eg, the new legislative and regulatory regime for specialist residential services and specialist disability accommodation providers. [↑](#footnote-ref-9)
10. See, eg, Victorian Ombudsman, *Investigation into the imprisonment of a woman found unfit to stand trial* (October 2018) (available at: <https://www.ombudsman.vic.gov.au/News/Media-Releases/imprisonment-of-woman-found-unfit-to-stand-trial>) (**Ombudsman’s Report on Imprisonment of a Woman Found Unfit to Stand Trial**). [↑](#footnote-ref-10)
11. See, eg, Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015) 6 (**Ombudsman’s Prison Report**). [↑](#footnote-ref-11)
12. See VLA Annual Report, above n 2. [↑](#footnote-ref-12)
13. See, eg, Ombudsman’s Report on Imprisonment of a Woman Found Unfit to Stand Trial, above n 10. [↑](#footnote-ref-13)
14. See, eg, Ombudsman’s Prison Report, above n 11, 6. [↑](#footnote-ref-14)
15. Department of Justice and Regulation (VIC), *Youth Parole Board Annual Report* (2018) x and 15. [↑](#footnote-ref-15)
16. Victorian Auditor-General’s Office, *Managing Rehabilitation Services in Youth Detention* (August 2018). [↑](#footnote-ref-16)
17. Office of the Public Advocate, *Rebuilding the village: Supporting families where a parent has a disability*, Report 2: Child Protection (2015). [↑](#footnote-ref-17)
18. See, eg, VLA’s cases *Ella Ingram v QBE Insurance (Australia) Ltd* [2015] VCAT No H107/2014 (18 December 2015) regarding discrimination by insurance companies in relation to mental health issues; *Slattery v Manningham CC* (Human Rights) [2013] VCAT 1869 regarding mental health discrimination by a council. See also Victoria Legal Aid, *Submission to the Australian Human Rights Commission, Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability* (December 2015) (available at: <https://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/other-activities#Willing_to_Work_Inquiry>). [↑](#footnote-ref-18)
19. In 2017–18, VLA provided over 2000 advices on infringements matters, and representation at the Magistrates’ Court Special Circumstances List in over 3000 cases for over 2000 clients. [↑](#footnote-ref-19)
20. See, eg, Victoria Legal Aid, *State of Trust: Making sure State Trustees protects and promotes the rights of Victorians with disability* (September 2018) (available at: <http://www.legalaid.vic.gov.au/about-us/news/our-report-for-victorian-ombudsmans-investigation-into-state-trustees>). In the 2017–18 financial year, for example, we provided nearly 500 advices to over 250 people about administration orders; and legal information about administration orders in over 300 cases. [↑](#footnote-ref-20)
21. See, eg, Health Justice Australia, ‘Mapping a New Path: The Health Justice Landscape’ (2018) (available at: <https://www.healthjustice.org.au/wp-content/uploads/2018/08/Health-Justice-Australia-Mapping-a-new-path.pdf>); State Government of Victoria, Access to Justice Review Report and Recommendations (August 2016) (available at: <https://engage.vic.gov.au/accesstojustice>); Victoria Legal Aid, ‘Mallee region to benefit from health justice partnership’ (December 2016) (available at: <https://www.legalaid.vic.gov.au/about-us/news/mallee-region-to-benefit-from-health-justice-partnership>). [↑](#footnote-ref-21)
22. See also Terms of Reference in the Royal Commission into Aged Care Quality and Safety (available at: <https://agedcare.royalcommission.gov.au/Pages/default.aspx>). [↑](#footnote-ref-22)
23. Mental Health Complaints Commissioner, *Annual Report* (2018) 45, 49 and 51. The Mental Health Complaints Commissioner’s 2017-18 Annual Report recommends: Gender-sensitive and trauma-informed practice; piloting and evaluating single-gender units, prioritising the piloting of women-only units; and support services to implement trauma-informed care and supported decision making as primary prevention strategies to prevent sexual safety breaches. [↑](#footnote-ref-23)
24. See *Targeting Zero: Supporting the Victorian hospital system to eliminate avoidable harm and strengthen quality of care*, Report of the Review of Hospital Safety and Quality Assurance in Victoria (2016) (available at: <https://grattan.edu.au/wp-content/uploads/2016/10/Hospital-Safety-and-Quality-Assurance-in-Victoria.pdf>); Victoria State Government, *Better, Safer Care: Delivering a world-leading healthcare system* (October 2016) (available at: <https://www2.health.vic.gov.au/hospitals-and-health-services/quality-safety-service/hospital-safety-and-quality-review>). [↑](#footnote-ref-24)
25. See, eg, IMHA Evaluation Report, above n 4, which is both a source of evidence for the RCMH and an example of work that was co-produced and privileges consumer voices. [↑](#footnote-ref-25)