

NSW Government
Review of the Mental Health Commission of NSW 2024

Submission by:
The Royal Australian and
New Zealand College of Psychiatrists
NSW Branch

Acknowledgement of Country

We acknowledge Aboriginal and Torres Strait Islander Peoples as the First Nations and the Traditional Owners and Custodians of the lands and waters now known as Australia. We recognise and value the traditional knowledge held by Aboriginal and Torres Strait Islander Peoples and honour and respect the Elders past and present, who weave their wisdom into all realms of life – spiritual, cultural, social, emotional, and physical.

Acknowledgement of Lived Experience

We recognise those with lived and living experience of a mental health condition, including community members and RANZCP members. We affirm their ongoing contribution to the improvement of mental healthcare for all people.

About the Royal Australian New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrist (RANZCP) is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand providing access to Fellowship of the College to medical practitioners. The RANZCP has approximately 8400 members bi-nationally. The NSW Branch represents over 2100 members, including over 1400 qualified psychiatrists.

The NSW Branch offers a substantial resource of distinguished experts – academics, researchers, clinicians, and leaders dedicated to developing expertise in understanding the risk factors of mental disorders, treating individuals and families, developing models of care and promoting public health measures that will reduce the personal suffering, loss of potential and huge economic costs caused by mental disorders in our community.

Recommendations

1. Expand the remit and independence of the NSW Mental Health Commission (the Commission).
2. Provide the Commissioner with the authority to hold government to account for the performance, quality and safety of the mental health system in NSW. This would include the authority to monitor, inspect, investigate, and report and make recommendations to Parliament.
3. Provide the Commission with power to monitor and enforce efficient use of funds for mental health services by Local Health Districts.
4. Provide the Commission with the authority to monitor and report on cooperation between Federal and State funded mental health services.
5. Provide the Commission with the authority to obtain data and information about mental health and wellbeing service delivery, system performance and outcomes, and other relevant information, from all government agencies.
6. Provide the Commission with the authority to source and share data and information from and with the Department of Health and other relevant entities.
7. Initiate its own inquiries into matters that support its objectives.
8. Provide the Commission with the authority to investigate complaints about mental health and wellbeing service delivery and compel remedial action.
9. Provide the Commission with the authority to make recommendations to the Premier, any minister and the heads of public service bodies.
10. Provide the Commission with the authority to conduct reviews and publish reports on the performance and quality and safety of the mental health and wellbeing system.

Introduction

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is pleased to provide this submission to the 2024 Review of the Mental Health Commission of NSW (the Commission).

The RANZCP believes that this review represents an opportunity for the NSW Government to redefine the role of the Commission into the future.

The RANZCP endorses the need for a robust Mental Health Commission in NSW. Currently, the Commission is sitting at the periphery, lacking the authority to make decisive interventions into the underfunded and poorly performing mental health system in NSW (1). The Commission should be integral to improving the performance, quality, and integrity of the mental health system in NSW instead of playing the more limited role of monitoring and reviewing the mental health of the community.

The Commission should be integral to the overarching direction and performance of mental health services in NSW. In NSW there is an over-reliance on crisis services and emergency departments largely due to underfunded community health services and critical workforce shortages. The introduction of services commissioned by Primary Health Networks (PHNs) should be providing relief to our over-burdened system but instead it has created confusion over which level of government is providing which service. The integration of PHN funded services with LHDs is an administrative complexity made up of different strategies, processes, reporting obligations, stakeholder issues and priorities. And it is unclear which agency in the mental health system should be addressing the social determinants of mental health with government departments (2, 3).

The Mental Health Commission with appropriate authority is best positioned to clarify the funding roles and responsibilities of both tiers of government and the stewardship of an improved framework for planning, monitoring and evaluating the performance of the mental health system (4).

Key Discussion Topics

1. Is the Commission fulfilling its purpose of monitoring, reviewing, and improving the mental health and wellbeing of the people of NSW?

Most of the failures, and crises, impacting the mental health system in NSW can be attributed to a critical lack of funding and not having a regulatory body with sufficient powers to provide the oversight and effective governance that the mental health system in NSW so desperately needs.

[Living Well](#) and [Living Well in Focus](#) have made significant contributions to the strategic direction of mental health services in NSW over the past decade, however the strategic priorities and principles for implementation contained in both documents have not materialised as positive outcomes for people with a mental health condition in NSW (5).

Currently we have gaps across the entire continuum of care and bottleneck pressure that is stifling emergency departments. Local Health Districts (LHDs) are not accountable for the way they allocate the mental health budget - that power currently sits with Chief Executive Officers and Boards - and peak bodies representing the separate views of consumers compete against each other for government funding and intervention.

Workforce issues, including recruitment, are devolved, with poor data sets informing planning, inconsistency in the application of awards, LHDs designing remuneration packages that create bidding wars between LHDs, and a lack of a statewide workforce strategy. There also appears a lack of accountability at the LHD level for implementation of NSW Health policies.

The RANZCP [position statement on principles for mental health systems](#) identifies consistent, coordinated data collection as being one of the key principles of optimal health systems. The RANZCP does not believe that the Commission can fulfill its monitoring and reviewing function without the authority, and the mechanism, to obtain data relative to system performance. This would include data on patient wait times, wait lists, bed vacancies, program performance and workforce issues such as staff vacancy rates and locum utilisation (6). Data should be reported and published by the Commission on a quarterly basis.

2. Is the Commission targeting and achieving the system change that is necessary?

While the Commission may be fulfilling a strategic, planning and monitoring role for the Minister and the Department, its capacity to educate, advocate, report and advise in accordance with its responsibilities under the Mental Health Commission Act 2012, has diminished in recent years (7).

A reimagined and empowered Mental Health Commission would have planning, oversight, reporting and assessment responsibilities for the performance of mental health services. It would also be afforded interdepartmental oversight to improve the social determinants of mental health; in the best interests of people with a mental health condition who are either in need of other services or experiencing difficulty through intervention by other services (2).

Currently, it is unclear where responsibility for interjurisdictional collaboration and broader collaboration with NSW Government departments rests. Our understanding is that the Mental Health Taskforce which sits between the Mental Health Cross Agency Working Group and the Ministers for Health, Mental Health and other Ministries (as demonstrated below in image 1) is responsible (8).

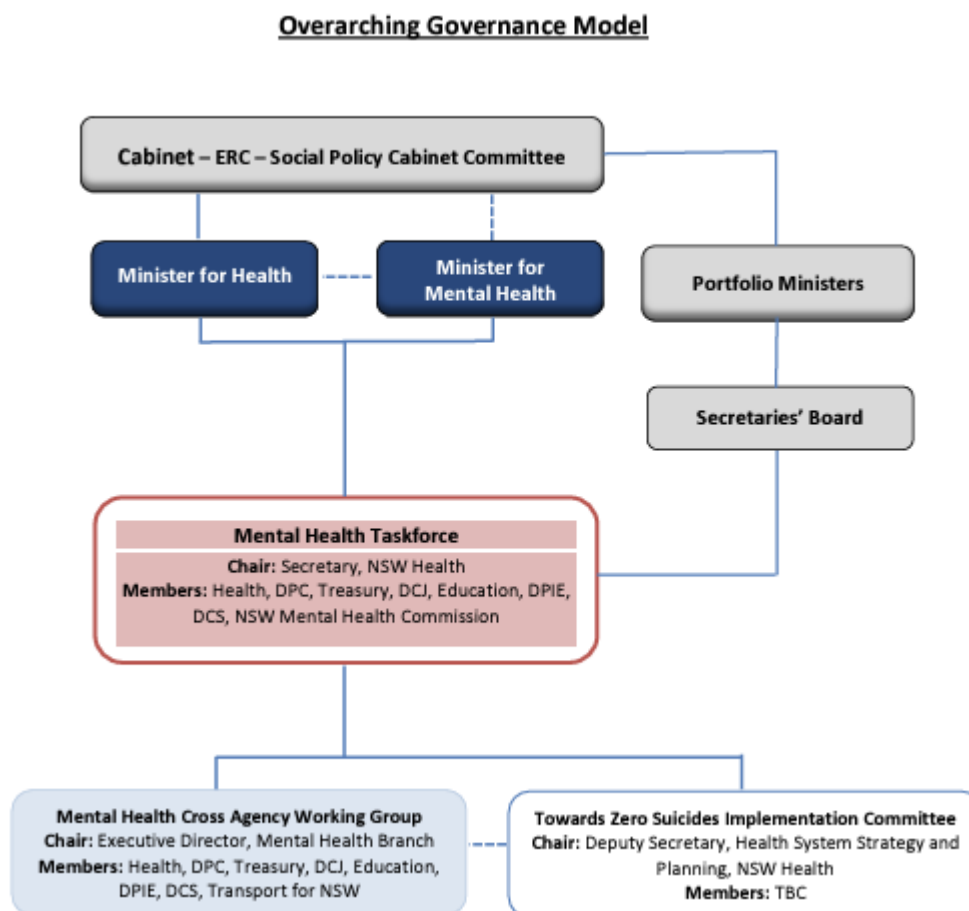


Image 1 ¹

If it is the case that the Mental Health Task force has those collaborative arrangements with Government Departments then we do not propose to change that arrangement, however there would need to be much greater definition and transparency about the role of the Mental Health Taskforce. This would be consistent

¹ [Mental Health Commission of NSW](#)

with our proposal for an Independent Commission within a proposed new Governance Structure as demonstrated in Image 2.

3. Has the Commission exercised its functions effectively?

There is little evidence that the Mental Health Commission has made any meaningful contribution to the perilous state of mental health services in New South Wales through either a report or a study that could in some way improve the performance of the mental health system.

The Ministry plays a policy role but has no operational responsibility. Responsibility for mental health services has been delegated to LHD Boards and Chief Executives. This has led to inconsistencies in service delivery and clinical and operational governance across the State's Mental Health Services. The proportion of the health budget attributed to mental health hasn't risen in decades and per capita spending on all mental health services in NSW is the lowest in the country – lower than all of the states and territories (1, 9).

Our psychiatrists report that the current operating model in LHDs is hospital centric, fragmented, and siloed with disparate intake criteria, no consistency of journey mapping nor continuity of care. We've also seen how short-term funded programs have a destabilising effect on mental health services in NSW (10) - staff leaving permanent roles for project roles, which has a destabilising effect on the already vulnerable workforce and clinical teams.

The balance between central and local governance is pivotal, and without any clear central review of oversight mechanisms LHDs are open to poor management decisions with respect to mental health service delivery and no accountability.

4. Is the Commission still required, in order to achieve the objectives of the Act?

The RANZCP believes the Commission is still required to achieve the objectives of the Act.

The evidence also suggests that when issues are raised about the efficacy and quality of services, little is done to bring about change (4).

The Mental Health Commission could affect real change as the agency that fosters genuine accountability by government for policy and system reform, strategy implementation, and mental health outcomes for patients.

For the Commission to achieve systemic change it would require the power to:

- Act as a body authorised to collaborate with government and stakeholders on mental health strategy, program design and other programs that have strong links with mental health outcomes including those in non-health portfolios
- Initiate its own inquiries into issues that are contrary to its objectives and purpose

- Investigate mental health service delivery
- Authority to request and receive data and information about mental health service delivery, system performance, and other relevant information.

5. Does the Commission require new functions or powers to achieve the Act's objectives?

5a. Independence of the Commission

The Commission rarely comments or advocates for a larger proportion of the health budget, for accessibility of services or the mental health workforce crisis. We have already, in this submission, referred to both the Commission's diminished role as an advocate and instrument for change. We've also referred to the uncertainty regarding which part of the system is responsible for the social determinants of mental health, like housing, homelessness, and employment etc (3).

Similarly, so much could be learned about system performance if the Commission had the authority and mechanism to obtain data from NSW Health. The RANZCP believes the Commission should have the authority to compel the Departments of Health and Mental Health, and other departments responsible for the social determinants of mental health to provide data that the Commission considers necessary.

The RANZCP does not believe that a reimagined Mental Health Commission is possible without achieving legislated independence from Government. The RANZCP supports the model proposed by the Black Dog Institute in its submission to this review (3).

Under this model the Commission reports to an independent Board rather than the Minister. Commissioners appointed to the Board would be independently selected by the Board rather than being political appointments. The model proposes that 50% of the Board be representatives from mental health peak bodies including consumer and carer groups and professional associations, and the other 50% Secretaries from relevant Government departments.

The RANZCP would like to see consideration given to the appointment of a Mental Health Commissioner in NSW with 'Inspector General' type powers to monitor, inspect, investigate, and report to NSW Parliament (11). The RANZCP believes the current state of mental health services in NSW warrants such an appointment. We will elaborate on this initiative in Item 6 of this submission.

5b. Proposed Governance Structure

A reimagined Commission, independent of Government would need to have strong collaborative relationships with all NSW Government Departments, not just Health and Mental Health. And, as discussed previously in this submission, the Mental Health Taskforce as the entity responsible for those collaborations would need to be far more transparent in its activities by meeting regularly and making the summary of those meetings available to all stakeholders.

Currently the Mental Health Taskforce is chaired by NSW Health and reporting to the Minister. In its submission, the NSW Mental Health Commission has recommended that the "NSW Mental Health

Taskforce would be better placed in the Cabinet Office with the Commission providing secretariat support (12).” The RANZCP supports this recommendation.

The RANZCP supports the Governance structure proposed by the Black Dog Institute in their submission to this review including the change of name to the Mental Health and Wellbeing Commission as recommended in the 2017 Review.

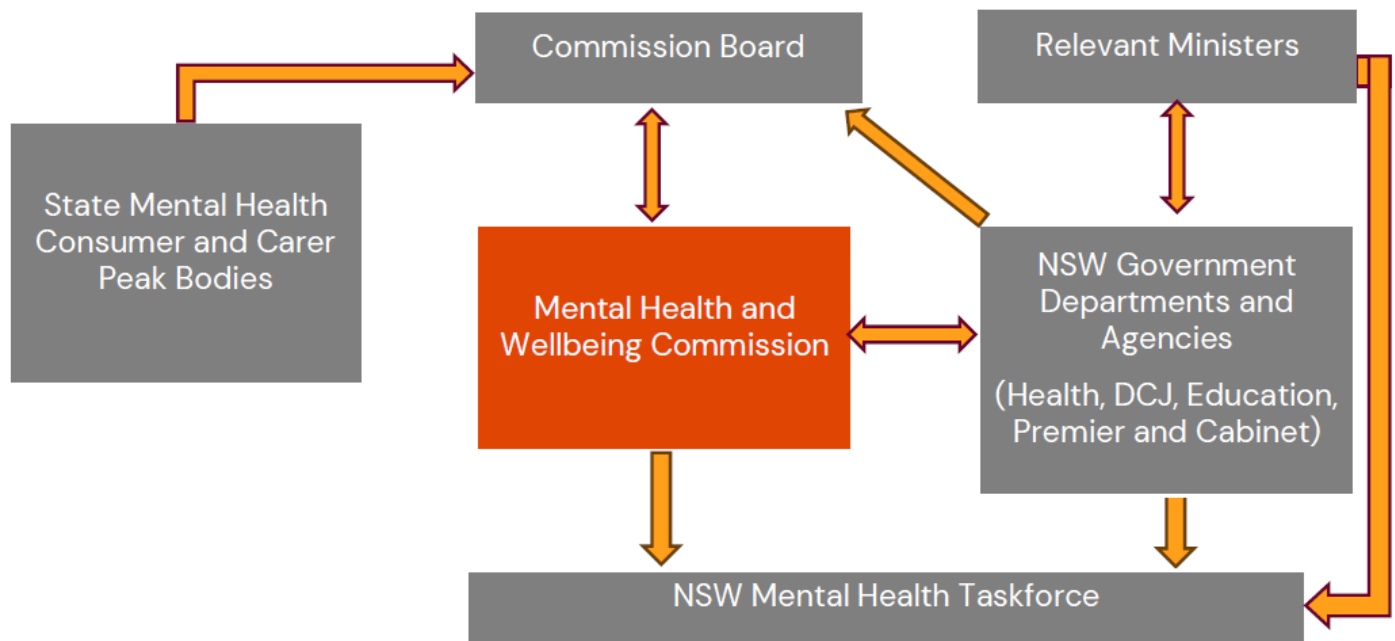


Image 2²

6. Should the Commission work differently with other state and national commissions?

The RANZCP believes the mental health services in NSW are in such a perilous state that we must act immediately and incisively. The system is too complex, inaccessible, at times ineffective with increasing inequality, chronically underfunded and unfit for purpose. While other states are increasing their investment in mental health services, NSW is falling further behind. As evidenced by the [Productivity Commission Report into Mental Health](#), bad mental health policy is a drain on the economy (1).

The RANZCP does not think that a national body with responsibility for oversight of state offices and services would be suitable given the legislations in each state and territory are different and the problems in NSW are more acute than in other states (13). And we reiterate that we don't think that the NSW Mental Health Commission can be free from constraint under the current model (reporting to Health and Mental Health) (3).

The RANZCP recommends an independent Commission with information gathering powers; and the power to monitor, investigate and report to Parliament on the state and administration of mental health services.

² The Black Dog Institute. Science. Compassion. Action. Review of the mental Health Commission of NSW

These powers would extend to departments responsible for social determinants of mental health. The Commission in NSW under such a model would not only define the performance standards and influence the governance of Mental Health Services in NSW, but also have the power to recommend and support remedial action in cases of poor performance and non-compliance and have responsibility for addressing complaints. We note that In Victoria, their Commission has a Complaints Commission arm dedicated to mental health complaints (3).

The RANZCP would support the exploration of an expanded role for the Commission, for example having more of a fundholding and allocation role, as occurs with the Western Australian Commission. The Western Australia Mental Health Commission is a commissioning agency that facilitates the delivery of the mental health budget. The Western Australian Commission is considered a partner in mental health service delivery (14).

Such an expanded role for the Commission in NSW would be contingent on its independence and appropriate resourcing. At the very least the Commission in NSW should have comprehensive oversight of the NSW mental health budget to ensure that the funding is being allocated appropriately. Improved departmental and central governance is required to ensure that LHDs deliver what they are funded to do.

7. Is the Health portfolio the right place for the Commission to fulfil its whole-of-government remit?

As a statutory authority established through legislation for the purpose of fulfilling the objectives of the NSW Mental Health Act, the Commission should be accountable to the people of NSW and be removed from any conflict of interest resulting from its association with a government department or political branch of government.

We have presented a model that has the Commission reporting to an independent Board made up of representatives from mental health peak bodies including consumer and carer groups and professional associations, and Secretaries from relevant Government departments.

The RANZCP believes that this model would provide both independence to the activities of the Commission and the authority to work across all Government Departments.

If you have any queries regarding this submission, please contact Richard Hensley, Policy and Advocacy Advisor NSW Branch via Richard.hensley@ranzcp.org or on (02) 9352 3609.

Royal Australian and New Zealand College of Psychiatrists submission

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