

9 April 2021

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**Mental Health  
Victoria**

Collaboration • Knowledge • Leadership

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Dear Ms Keenan,

Mental Health Victoria (MHV) welcomes the opportunity to provide feedback on the Victorian candour and open disclosure guidelines and proposed model for clinical incident review protections (April 2021).

MHV is the peak body for mental health in Victoria. Our membership includes consumer, family and carer groups, public hospitals and non-government organisations, unions, medical colleges, police and emergency services, local government, and peak bodies.

We support the introduction of duty of candour laws in principle and welcome the Victorian Government's commitment to ensuring services apologise to any person seriously harmed while receiving care. Open disclosure guidelines and protections for clinical incident reviews are important complements to duty of candour laws.

Duty of candour laws have the potential to provide critical supports to the mental health sector which is currently undergoing once-in-a-generation reforms after years of under-resourcing and crisis-driven care. Ensuring that services apologise to any person seriously harmed while receiving care will do much to help people recover following traumatic experiences of care, and rebuild trust between consumers, carers and service providers.

However, application of candour laws to the mental health sector requires careful consideration to ensure the scheme can operate as intended. The mental health system is different from the physical health system in a number of aspects which may impact the operation of duty of candour laws, including:

- the nature of incidents and events specific to and/or prevalent within mental health settings
- the nature and side effects of some mental health treatments
- the application of compulsory treatment laws
- the potential impacts of disclosure on patient care and wellbeing
- the capacity of patients to understand a disclosure at a given time
- historic under-resourcing and ongoing systematic reforms.

Ascertaining whether events will be subject to duty of candour laws is complex in mental health settings. Specific consideration will need to be given to incidents specific to and/or prevalent within mental health settings, including:

- application of treatments under compulsory treatment laws, including psychotropic medications and other therapies, such as electroconvulsive therapy
- the use of restrictive practices
- suicidal behaviour, including in the context of discharge and/or non-admittance
- violence between patients, especially sexual and gender-based violence.

Applying the Victorian health incident management policy to these incidents is not straight-forward and without clear guidelines with specific advice for mental health services, there is the risk that variations in practice will compromise the integrity of the scheme, and the trust that patients and carers place in it.

The potential impact of apologies on patients and their families/carers must also be considered, as they can impact a person's care and wellbeing. Follow-up supports in these circumstances should be included as part of the process, including peer supports which may be best provided by an external service.

Decisions will also be required as to the best method of providing an apology, including as to the timing and form of communication. This is particularly relevant in mental health settings considering the potential impact of an incident, disclosure and apology on a person's state of mind, and the state of a person's capacity to understand it. These issues will be particularly relevant where compulsory treatment is concerned.

Finally, duty of candour laws should maintain a focus on identifying and mitigating systemic factors contributing to the occurrence of relevant incidents, including system blockages and workforce skills and training gaps, to support the continuous improvement of practices across the system.

In order to ensure duty of candour laws can be appropriately and effectively applied to the mental health sector, Mental Health Victoria recommends:

- specific consideration of whether and how events specific to and/or prevalent within mental health settings should be subject to duty of candour laws
- provision of clear guidance to support mental health service providers categorise such events in making determinations of whether duty of candour laws apply to specific cases
- an allowance and/or requirement for service providers to consider the impact of disclosure on the mental health and wellbeing of patients and carers, with mechanisms to connect people to appropriate supports, such as through peer support services
- an allowance and/or requirement for service providers to consider the capacity of a patient to inform decisions regarding timing and form of communication

- monitoring of apologies made under the law to identify areas for system improvement.

Consideration of these recommendations are essential to ensuring duty of candour laws can operate effectively in mental health settings. Enacted appropriately, the laws have the potential to foster more honest and open cultures in mental health services that benefit consumers and families, while embedding preventative actions within the system, reducing the likelihood of future incidents.

We thank the Government for the opportunity to contribute to this important reform and welcome any further opportunity to provide advice.

For further information on this submission, please contact Joshua Finn, Senior Policy Advisor, on (03) 9519 7000 or [J.Finn@mhvic.org.au](mailto:J.Finn@mhvic.org.au).

Kind regards,



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