# Mental Health (Victorian Institute of Forensic Mental Health) Act 1997

Act No. 77/1997

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### PART 6A—VICTORIAN INSTITUTE OF FORENSIC MENTAL HEALTH

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### NOTES

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The Parliament of Victoria enacts as follows:

1. Purpose

   The main purpose of this Act is to establish the Victorian Institute of Forensic Mental Health.

2. Commencement

   (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
(2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(3) If a provision referred to in sub-section (2) does not come into operation before 1 January 1998, it comes into operation on that day.

3. Definitions

In section 3 of the Mental Health Act 1986, in the definition of "approved mental health service", after "section 94" insert ", including the Victorian Institute of Forensic Mental Health".

4. Objects of Principal Act

After section 4(1)(d) of the Mental Health Act 1986 insert—

"(da) to establish a Victorian Institute of Forensic Mental Health; and".

5. New Part 6A inserted in Mental Health Act 1986

After Part 6 of the Mental Health Act 1986 insert—

'PART 6A—VICTORIAN INSTITUTE OF FORENSIC MENTAL HEALTH

117A. Definitions

In this Part—

"Council" means Victorian Institute of Forensic Mental Health Council established by section 117E;

"Institute" means Victorian Institute of Forensic Mental Health established by section 117B.
117B. Establishment of Institute

(1) The Victorian Institute of Forensic Mental Health is established.

(2) The Institute—

(a) is a body corporate with perpetual succession;
(b) has an official seal;
(c) may sue and be sued;
(d) may acquire, hold and dispose of real and personal property;
(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) All courts must take judicial notice of the seal of the Institute affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

(4) The seal of the Institute must be kept in such custody as the Council directs and must not be used except as authorised by the Council.

117C. Functions and powers of the Institute

(1) The functions of the Institute are—

(a) to provide, promote and assist in the provision and planning of forensic mental health and related services in Victoria and, as far as practicable, oversee and co-ordinate those services;
(b) to provide clinical assessment services to courts, the Adult Parole Board and other relevant government agencies;
(c) to provide inpatient and outpatient services and specialist treatment.
programs to patients and other people with a mental disorder;

(d) to provide clinical forensic mental health services, service development advice and planning services to government and non-government bodies in accordance with agreements for services between those bodies and the Institute;

(e) to provide specialist treatment and support services to victims of criminal offences;

(f) to provide community education in relation to the services provided by the Institute and forensic mental health generally;

(g) to provide, promote and assist in the under-graduate and post-graduate instruction and training of professionals in the field of forensic psychiatry;

(h) to provide, promote and assist in the teaching of and training in clinical forensic mental health within medical, legal, general health and other education programs;

(i) to conduct research in the fields of forensic mental health, forensic health, clinical forensic medicine and associated fields;

(j) any other functions conferred on the Institute by or under this or any other Act.

(2) The Institute has power to do all things necessary or convenient to be done for, or in
connection with, or as incidental to, the performance of its functions.

(3) Without limiting sub-section (2), the Institute has power—
(a) to enter into agreements for services provided by the Institute;
(b) to impose fees and charges for the provision of services;
(c) to seek and accept funds from any person for the purposes of performing its functions.

117D. Institute is an approved mental health service

The Institute is deemed to have been proclaimed to be an approved mental health service under section 94.

117E. Establishment of Council

(1) The Victorian Institute of Forensic Mental Health Council is established.

(2) The Council—
(a) is responsible for the management of the affairs of the Institute; and
(b) may exercise the powers of the Institute.

117F. Constitution of Council

(1) The Council consists of—
(a) the Clinical Director of the Institute;
(b) the chief executive officer of the Institute;
(c) a nominee of the Attorney-General;
(d) a nominee of the Minister administering the Corrections Act 1986;

(e) 6 other members, of whom—

(i) at least one is a fellow of the Royal Australian and New Zealand College of Psychiatrists;

(ii) at least one is a person who has knowledge of, or experience in, accountancy or financial management;

(iii) at least one is appointed to represent the interests of patients.

(2) The members of the Council, other than the Clinical Director and the chief executive officer, are to be appointed by the Minister on the terms and conditions determined by the Minister and specified in the instrument of appointment.

(3) A member, other than the Clinical Director or the chief executive officer, holds office for the term, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment.

(4) A member is not subject to the Public Sector Management Act 1992 (except Part 9 or in accordance with Part 8) in respect of the office of member.

(5) The Minister must appoint one of the members as chairperson of the Council.

117G. Resignation and removal

(1) A member of the Council, other than the Clinical Director or the chief executive officer
officer, may resign by writing signed by that person and delivered to the Minister.

(2) The Minister may remove a member of the Council, other than the Clinical Director or the chief executive officer, from office if satisfied that—

(a) the member is physically or mentally unable to fulfil the role of member; or

(b) the member has been convicted of an offence, the commission of which, in the opinion of the Minister, makes the member unsuitable to be a member of the Council; or

(c) the member has been absent, without leave of the Council, from all meetings of the Council held during a period of 6 months; or

(d) the member is an insolvent under administration within the meaning of the Corporations Law.

117H. **Clinical Director**

(1) The Minister may appoint as Clinical Director of the Institute—

(a) the person who holds the Chair in Forensic Psychiatry at Monash University; or

(b) a person who holds a similar chair at another Victorian university; or

(c) a qualified psychiatrist with experience in forensic psychiatry.

(2) The Clinical Director—
(a) holds office for the term, not exceeding 5 years, specified in the instrument of appointment;

(b) holds office on the terms and conditions determined by the Minister and specified in the instrument of appointment;

(c) is eligible for re-appointment.

(3) The Clinical Director may resign by writing signed by him or her and delivered to the Minister.

(4) The Minister may remove the Clinical Director from office if satisfied that—

(a) the Clinical Director is physically or mentally unable to perform the functions of Clinical Director; or

(b) the Clinical Director has been convicted of an offence, the commission of which, in the opinion of the Minister, makes the Clinical Director unsuitable to hold office; or

(c) the Clinical Director has been absent, without leave of the Council, from all meetings of the Council held during a period of 6 months; or

(d) the Clinical Director is an insolvent under administration within the meaning of the Corporations Law.

(5) The functions of the Clinical Director are—

(a) to provide clinical care and services;

(b) to promote and maintain the quality of clinical care and services provided by the Institute;
(c) to develop and maintain the research functions of the Institute and co-ordinate service evaluation in the Institute;

(d) to promote the role of the Institute in professional training and community education;

(e) any other functions specified by the Minister.

117I. **Chief executive officer**

(1) The Council may appoint a person as the chief executive officer of the Institute.

(2) The chief executive officer holds office on the terms and conditions determined by the Council and specified in the instrument of appointment.

(3) The chief executive officer is responsible to the Council for the following functions—

(a) developing the corporate plans for the Institute;

(b) ensuring the efficient and effective utilisation of resources by the Institute;

(c) service development and planning;

(d) any other functions specified by the Council.

117J. **Other staff**

(1) The Council may employ any other staff necessary for the performance of the functions of the Institute.

(2) The terms and conditions of employment of staff of the Institute are as determined by the Council.
(3) An employee of the Institute who, immediately before that employment, was an officer or employee of the public service employed exclusively in connection with the functions of the forensic psychiatry service in the Department of Human Services continues to be an officer or employee of the public service while an employee of the Institute for the purposes of Part 2 of Schedule 4 to the Public Sector Management Act 1992 and that Part takes effect as if a reference in it to the appropriate Department Head were a reference to the Secretary.

(4) An employee of the Institute who, immediately before employment, was an officer within the meaning of the State Superannuation Act 1988 continues, subject to that Act, to be such an officer while an employee of the Institute.

117K. Procedure of Council

(1) The chairperson of the Council or, in his or her absence, a member appointed by the members present, must preside at a meeting of the Council.

(2) The quorum of the Council is 6 members.

(3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.

(4) The Council must ensure that accurate minutes are kept of its meetings.

(5) Subject to this Act, the Council may regulate its own procedure.
117L. **Validity of acts or decisions**

An act or decision of the Council is not invalid only because—

(a) of a defect or irregularity in, or in connection with, the appointment of a member; or

(b) of a vacancy in the office of a member.

117M. **Immunity**

(1) A member of the Council is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function or duty under this Act; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or performance of a function or duty under this Act.

(2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a member of the Council attaches instead to the Institute.

117N. **Directions**

(1) The Minister may give to the Institute any written direction that he or she thinks fit.

(2) As soon as possible after a direction is given, the Minister must cause a copy of it to be published in the Government Gazette.

(3) The Institute must comply with a direction given under this section, but an act or decision of the Institute or the Council is not invalid only because of a failure to comply with such a direction.
117O. Corporate plan

(1) The Council must prepare a corporate plan for the Institute for each financial year.

(2) The Council must give a copy of the proposed plan to the Minister on or before 31 May in each year.

(3) The proposed corporate plan must be in or to the effect of a form approved by the Minister and must include—
   
   (a) a statement of corporate intent in accordance with section 117P;

   (b) a business plan containing such information as the Minister requires;

   (c) financial statements containing such information as the Minister requires.

(4) The Council must consider any comments on the proposed plan that are made to it by the Minister within 2 months after the plan was submitted to the Minister.

(5) The Council must consult in good faith with the Minister following communication to it of the comments, must make such changes to the plan as are agreed between the Minister and the Council and must deliver the completed plan to the Minister within 2 months after the commencement of the financial year.

(6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Part without the prior approval of the Council and the Minister.

(7) The plan may be modified at any time by the Council with the agreement of the Minister.
(8) If the Council, by written notice to the Minister, proposes a modification of the plan, the Council may, within 14 days, make the modification unless the Minister, by written notice to the Council, directs the Council not to make it.

(9) The Minister may, from time to time, by written notice to the Council, direct the Council to include in, or omit from, a statement of corporate intent, a business plan or a financial statement of a specified kind, any specified matters.

(10) Before giving a direction under this section, the Minister must consult with the Council as to the matters to be referred to in the notice.

(11) The Council must comply with a direction under this section.

(12) At any particular time, the statement of corporate intent, the business plan or the financial statements for the Institute are the statements and plan last completed, with any modifications or deletions made in accordance with this Part.

117P. **Statement of corporate intent: contents**

Each statement of corporate intent must specify for the Institute, in respect of the financial year to which it relates and each of the 2 following financial years, the following information—

(a) the business objectives of the Institute;

(b) the main undertakings of the Institute;

(c) the nature and scope of the activities to be undertaken by the Institute;
(d) the accounting policies to be applied in the accounts;

(e) the performance targets and other measures by which the performance of the Institute may be judged in relation to the stated business objectives;

(f) the kind of information to be provided to the Minister by the Institute during the course of those financial years;

(g) such other matters as may be agreed on by the Minister and the Council from time to time.

117Q. Corporate plan to be followed

The Institute must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the Minister to do otherwise.

117R. Nothing void merely because of non-compliance

Nothing done by the Institute or the Council is void or unenforceable merely because the Institute or the Council has failed to comply with section 117O, 117P or 117Q.

117S. Council to give notice of significant events

If the Council forms the opinion that matters have arisen—

(a) that may prevent, or significantly affect, achievement of the business objectives of the Institute under the corporate plan; or

(b) that may prevent, or significantly affect achievement of the targets under the plan—
the Council must immediately notify the Minister of its opinion and the reasons for the opinion.

117T. **Reports to Minister**

The Minister may, in writing, require the Institute to give the Minister any information that he or she requires.

117U. **Annual report**

In its annual report for a financial year under Part 7 of the **Financial Management Act 1994**, the Institute must include—

(a) a copy of each direction given to it during that year under section 117N together with a statement of its response to the direction; and

(b) a copy of the statement of corporate intent last completed.'.

6. **Amendment of Health Services Act 1988**

For section 17AB of the **Health Services Act 1988** substitute—

'17AB. **Definition**

In this Division, "agency" includes the Victorian Institute of Forensic Mental Health established by section 117B of the **Mental Health Act 1986** but does not include a privately-operated hospital.'

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Minister’s second reading speech—
Legislative Assembly: 8 October 1997
Legislative Council: 11 November 1997

The long title for the Bill for this Act was "to establish the Victorian Institute of Forensic Mental Health, to amend the Health Services Act 1988 and the Mental Health Act 1986 and for other purposes."