

Mental Health (Victorian Institute of Forensic Mental Health) Bill

EXPLANATORY MEMORANDUM

Outline

The Bill makes amendments to the **Mental Health Act 1986** to establish the Victorian Institute of Forensic Mental Health.

Clause Notes

Clause 1 sets out the purpose of the Bill.

Clause 2 is the commencement provision.

Sections 1 and 2 will come into force when the Act receives the Royal Assent.

Other sections will come into force on 1 January 1998 unless proclaimed earlier.

Clause 3 amends the definition of "approved mental health service" in section 3 of the **Mental Health Act 1986** to include the Victorian Institute of Forensic Mental Health.

Clause 4 amends the objects of the **Mental Health Act 1986** to provide that it is an object of the Act to establish the Institute.

Clause 5 inserts a new Part 6A into the Mental Health Act. The new Part 6A consists of sections 117A to 117U.

New section 117A provides definitions for a number of terms used in Part 6A.

"Council" as used in the new Part 6A means the governing Council of the Victorian Institute of Forensic Mental Health.

"Institute" as used in Part 6A means the Victorian Institute of Forensic Mental Health.

New section 117B establishes the Institute as a body corporate with an official seal and the normal powers of a body corporate.

Sub-section (3) provides that courts must take judicial notice of the Institute's seal and presume that it was properly affixed.

Sub-section (4) provides that the seal must only be used as authorised by the Council.

New section 117C sets out the functions of the Institute. These functions reflect the role of the Institute as the primary provider of a wide range of services in the field of forensic mental health. In addition to the provision of assessment and treatment services, the Institute will also provide professional and community education and conduct research in the area of forensic mental health and associated disciplines.

Under section 117C(3) the Institute may enter into agreements with organisations or bodies to provide services for a fee.

New section 117D provides that the Institute is deemed to be an approved mental health service under section 94 of the **Mental Health Act 1986**. This will allow the Institute to treat patients under the Mental Health Act.

New section 117E establishes the Council of the Institute, which is responsible for the management of the Institute.

New section 117F provides for the membership of the Council. Members are appointed by the Minister for Health and hold office for a period of up to three years. They are eligible for re-appointment.

New section 117G sets out the provision for resignation or removal of members of the Council.

New section 117H provides for the appointment and functions of the Clinical Director of the Institute. The Clinical Director will hold office for up to five years and is eligible for re-appointment. She or he can be removed from office on the same grounds as a Council member. The functions of the Clinical Director relate to the provision of the clinical services, research and community and professional education roles of the Institute.

New section 117I provides for the appointment of the chief executive officer of the Institute. The CEO is appointed by the Council for up to 5 years and is responsible for the corporate management of the Institute.

New section 117J provides for the Council to appoint any employees necessary to carry out the functions of the Institute. New section 117J(3) provides that certain employees who were public servants under the **Public Sector Management Act 1992** may "carry over" their long service leave entitlements if employed by the Institute. New sub-section (4) will enable certain public servants to carry on their existing superannuation entitlements if employed by the Institute.

New section 117K provides that the Council of the Institute must follow certain procedures and subject to that section may regulate its own procedure.

New section 117L makes provision for the validity of Council decisions even though there is a defect in the appointment of a member or a vacancy in the office of a member.

New section 117M provides personal immunity from liability for Council members for acts or omissions in the carrying out of their responsibilities under the legislation. Any liability which might attach to the Council member personally in the circumstances set out in the provision will attach instead to the corporate entity of the Institute.

New section 117N allows the Minister to give directions to the Institute, which must be published in the Government Gazette and complied with by the Institute.

New section 117O states that the Institute must prepare a corporate plan which must be submitted to the Minister, who may make comments to be considered by the Council. The Minister or the Council may modify the plan. The Minister may direct the plan to be altered and the Council must comply with any direction given by the Minister.

New section 117P sets out the requirements for any statement of corporate intent provided by the Council under section 117O.

New section 117Q states that the Institute must follow its corporate plan unless it has previously obtained the permission of the Minister to depart from the plan.

New section 117R provides that acts of the Institute are not void or unenforceable merely because the Institute has not complied with the corporate plan.

New section 117S provides that the Council must notify the Minister of matters which may prevent it from complying with its corporate plan.

New section 117T states that the Minister may require the Council to provide the Minister with reports on any matter.

New section 117U provides that the Institute must include its corporate plan and any directions given to it by the Minister in its annual report under the **Financial Management Act 1994**.

Clause 6 amends section 17AB of the **Health Services Act 1988** to provide that the Institute is an agency for the purposes of Division 1 of Part 3 of that Act.