

# Government Response to the Education and Health Standing Committee Report on the Inquiry into the Esther Foundation and unregulated private health facilities.

## INTRODUCTION

The McGowan Government recognises the bravery and resilience of former residents of the Esther Foundation, their family members or supporters, staff, contractors, service providers and volunteers who shared their experiences with the Education and Health Standing Committee.

The McGowan Government acknowledges the Committee's finding that unacceptable practices occurred at the Esther Foundation which caused harm to many people. We recognise the opportunity to drive changes to prevent others from having similar experiences in the future and are strongly committed to providing safe, quality services to the Western Australian public.

The subject of the Inquiry and the content contained within the response may be distressing for those who have experienced similar abusive practices. If reading or hearing any of this content is distressing, please contact the support services listed below.

- Here For You is a statewide confidential, telephone service for anyone concerned about their own or another person's alcohol and other drug use and/or mental health issues. Phone: 1800here4u (1800 437 348)
- Sexual Assault Resource Centre (SARC) provides a range of free services to people affected by sexual violence. Phone: (08) 6458 1828 or free call 1800 199 888.
- Beyond Blue - Anxiety, depression and suicide prevention support 1300 22 4636
- Lifeline Australia - Crisis Support 13 11 14
- QLife a national service that aims to keep LGBTQI communities supported and connected. Phone: 1800 184 527 (3pm–midnight AEST)

## BACKGROUND

On 1 December 2022 the Committee tabled its Report on the Inquiry into the Esther Foundation and unregulated private health facilities (the Report).

The Report provides an overview of the Esther Foundation as a service provider, and the circumstances which enabled the organisation to engage in unacceptable practices for an extended period of time.

The Report acknowledges the substantial and compelling evidence provided by former residents of Esther House who came forward to share their experience. This evidence included allegations of emotional and psychological abuse, coercive and extreme religious practices, LGBTQA+ suppression and conversion practices, culturally harmful practices, medical complaints, family alienation, physical restraint and assaults and sexual assault.

The Committee also received submissions with complaints and allegations against other unregulated private health facilities that continue to operate in Western Australia. This evidence highlights the need for major change in how private health services are regulated in Western Australia to adequately protect vulnerable consumers.

The Committee made five recommendations and 42 findings. The Government has considered in detail the recommendations of the Report and the Government response is outlined below. The Government supports in full or in principle all recommendations.

## GOVERNMENT RESPONSE

The first three recommendations made by the Committee relate to accreditation and licensing of private health services.

### Recommendation 1

That the Minister for Health and Mental Health direct that a statutory review of the Private Hospitals and Health Services Act 1927 be conducted, with particular consideration given to:

- updating and clarifying specific service definitions
- expanding the regulator's investigatory and enforcement powers
- allowing for services that require licensing to be prescribed within the regulations rather than the Act
- whether accommodation-based mental health services should be put into a separate legislative and regulatory regime
- whether AOD treatment services should be included as a prescribed service
- enabling transparency so that consumers can make informed choices when selecting a service.

### Recommendation 2

That the Minister for Health and Mental Health ensures that a regulatory process for AOD treatment services is established, to give full effect to the National Quality Framework for Drug and Alcohol Treatment Services. This should involve consideration of a licensing scheme for AOD treatment providers.

### Recommendation 3

That the Minister for Health and Mental Health establish a licensing and regulatory scheme for private mental health and AOD treatment services, with particular consideration given to:

- developing sector-specific service definitions in consultation with the sector
- incorporating the requirements of the National Quality Framework for Drug and Alcohol Treatment Services
- incorporating sector-specific quality requirements
- using a risk-based approach to determine the level of regulatory input required for different services
- giving the regulator investigatory and enforcement powers in relation to noncompliant services.

### ***Recommendation 1: Supported***

The Government supports the development of contemporary legislation to ensure the efficient and effective regulation of private health facilities including mental health and alcohol and drug services.

Consistent with Recommendation 1, the Department of Health will conduct a statutory review of the Private Hospitals and Health Services Act 1927 (the PHHSA Act) to consider what changes are required to enable contemporary and effective regulation of private healthcare facilities, accommodation-based mental health services and AOD treatment services.

The PHHSA Act governs 122 private hospitals, day hospitals, nursing posts, nursing homes and private psychiatric hostels, which cater for 7,000 physically or mentally ill patients and residents at any one time. This Government recognises the changing nature of society, health care and health services since the PHHSA Act was created and in on-going regulatory challenges, the Department of Health has already commenced work to understand what elements of the Act are no longer contemporary or fit-for-purpose.

The Department of Health will build on this existing program of work to complete a statutory review of the Act which meets the key considerations outlined by the Committee in its findings and recommendations. In accordance with the Better Regulation Program, further consultation with the sector will be undertaken to inform the Regulatory Proposal. Consumer engagement will also form a critical part of the review.

***Recommendations 2 and 3: Supported in-principle.***

The National Quality Framework for Drug and Alcohol Treatment Services (the Framework) applies to all AOD treatment services, including those who receive government funding and those who do not. To be compliant with the Framework, all AOD treatment services were required to obtain accreditation against one of eight accreditation standards recognised under the Framework by 28 November 2022.

Government agrees with the Committee’s assertion that a statutory review of the PHHSA Act should be the starting point to reforming the regulation of private healthcare facilities, accommodation-based mental health services and AOD treatment services.

The implementation of recommendations 2 and 3 will depend on the outcomes of the statutory review.

**Recommendation 4**

That the Minister for Health and Mental Health amends the Health and Disability Services (Complaints) Act 1995 to provide HaDSCO with greater powers to handle complaints and concerns about organisations that provide health services. These powers should be comparable to the powers that HaDSCO will have in relation to individual healthcare workers through the implementation of the National Code of Conduct for Health Care Workers—including the ability to receive complaints, initiate own-motion investigations and issue prohibition orders.

In doing so, the Committee recommends consideration be given to:

- How HaDSCO’s expanded jurisdiction in relation to organisations would complement the regulation of health services captured by the *Private Hospitals and Health Services Act 1927*.
- Whether a regulatory gap exists concerning complaints mechanisms for community services in WA, and whether it would be beneficial to broaden HaDSCO’s jurisdiction to include community services.

***Supported.***

The committee raised concerns that the absence of an external complaints mechanism with the ability to resolve complaints about the Esther Foundation and outlined the need for regulatory reform to ensure affected people can have their complaints dealt with by a dedicated body that is positioned to deliver better outcomes for individual complainants in the future.

The Health and Disability Services Complaints Office (HaDSCO) currently provides an impartial resolution service to complaints relating to health, disability and mental health services in Western Australia. However, HADSCO's jurisdiction is currently limited by the Health and Disability Services (Complaints) Act 1995 (WA).

The Report notes the recent Health and Disability Services (Complaints) Amendment Act 2022 will expand HaDSCO's jurisdiction in relation to unregistered health care workers, in accordance with the National Code of Conduct for health care workers. If this Act had commenced while the Esther Foundation was operating, HADSCO would have been empowered to handle complaints regarding individual health care workers at the facility but not the organisation itself.

The expansion of the National Code scheme to include organisations that provide health services but fall outside the jurisdiction of existing regulatory arrangements would fit within HaDSCO's existing jurisdiction for complaints about health services, as well as the framework for the National Code as it applies to individual health care workers under the Health and Disability Services (Complaints) Amendment Act 2022 (WA).

The National Code is already applicable to organisations in New South Wales and Victoria, providing examples of the legislative changes required for HaDSCO to have a comparable jurisdiction in Western Australia.

Recommendation 4 also raises the issue of a regulatory gap in terms of complaint mechanisms for community services and broadening HaDSCO's jurisdiction to include community services.

Government notes there are Health Complaints entities across Australia that do have jurisdiction over community services including South Australia, the Northern Territory and the Australian Capital Territory.

HADSCO recently commenced a statutory review of the Health and Disability Services (Complaints) Act 1995 (WA). Further consideration of HaDSCO's jurisdiction to include community services, including service definitions, will be undertaken as part of this review to ensure that any application of a scheme similar to the National Code is complementary to the regulatory structures already in place for these services in Western Australia. The statutory review will also examine whether HaDSCO's complaints jurisdiction should be expanded to include entities that provide health services rather than only individual practitioners.

#### Recommendation 5

That the Attorney General introduces legislation to prohibit conversion practices, and establish a civil response scheme and supports for survivors of conversion practices.

#### ***Supported.***

Government notes the Committee's finding that expanding the jurisdiction and powers of the HaDSCO will not prevent LGBTIQ+ conversion practices in Western Australia, as these practices occur both within and outside of healthcare settings.

The McGowan Government has a strong record in supporting LGBTIQ+ people in Western Australia and is opposed to attempts to forcibly change a person's sexual orientation or gender identity.

Conversion and suppression practices seek to change or suppress an individual's sexual orientation or gender identity. They are formal and informal practices that are based on the claim that LGBTIQ+ people have a disorder and require treatment. Practices can include teachings, counselling, spiritual care activities, or other psychological or medical interventions based on the ideology that there is something wrong or broken about people with diverse sexualities or gender identities. There is no evidence that sexual orientation or gender identity can be changed. Not only are these practices ineffective – they cause serious harm and have long term negative impacts on the health and wellbeing of LGBTIQ+ people.

Conversion and suppression practices undermine the fundamental value of personal dignity and there is evidence that conversion therapy remains a real problem in some Australian religious communities. LGBTIQ+ people are at greater risk of discrimination and poor mental health. This risk is compounded for LGBTIQ+ people who live in communities where conversion or suppression practices are conducted. Evidence from survivors and advocacy organisations has demonstrated ongoing harm and trauma caused by these practices, including long term mental illness and suicidality.

The ACT, Queensland, Victoria, and New Zealand have enacted legislation that prohibits conversion and suppression practices.

On 1 December 2022 the McGowan Government announced that practices seeking to change or suppress an individual's sexual orientation or gender identity would be criminalised, with an exception for accredited health professionals. It is considered that accredited health professionals are properly regulated through their professional bodies.

Further, it is appropriate that people receive expert assessment, treatment and care when seeking to affirm gender through medical treatments such as hormone blocking therapies or surgical procedures. Consequently, it is also appropriate that any reform recognises that accredited health professional with relevant expertise should be able to provide care for people, particularly young people, on this pathway.