



SERVICES AND PROGRAM ENTRY

CATEGORY: *Short Term Projects & Initiatives*

ENTRY TITLE: Principles of Consumer-centred
Lawyering at the Mental Health Tribunal

NAME OF APPLICANT: Pan Karanikolas, on behalf of
the project team (Associate Professor Chris Maylea
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Associate Professor Robyn Martin, Professor Penelope
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ORGANISATION: La Trobe University

DATE OF COMMENCEMENT: 26 April 2022

Additional Information about Entry (max. 1 x A4 page).

The Royal Commission into Victoria's Mental Health System highlighted that in 2018-19 consumers were only legally represented in 13% of Victorian Mental Health Tribunal hearings, compared to 83% of hearings in New South Wales.¹

Recommendation 56(3) of the Royal Commission held that increasing the rate of representation, particularly where consecutive compulsory treatment orders in the community are sought, is central to supporting consumers to exercise their rights.

The project was funded to address this recommendation, and make recommendations for Victoria's new legal services model, now endorsed by the Department of Health and other key industry stakeholders. Along with direct service modelling, the project team co-designed the *Principles of Consumer-Centred Lawyering*, providing 12 central principles for mental health lawyers to implement in Mental Health Tribunal settings, based on consumers' descriptions of what they want and need.²

Our extensive consultations with consumers (n=84) and sector stakeholders (n=88), two reviews of the available evidence and an analysis of available quantitative data raised issues that must be addressed to ensure clients at the Mental Health Tribunal have access to justice and effective legal representation. A review of the existing evidence and literature identified a lack of grey literature and peer-reviewed research asking clients what they want and need from lawyers in the context of mental health law. To date, no other English-language studies have asked clients what matters to them or, from a client perspective, what effective legal representation or best practice looks like at Mental Health Tribunals. By working to fill this gap and asking clients what a good experience of legal representation means to them, this document is the first of its kind.

The *Principles* guide lawyers in providing legal representation and advocacy to clients. Each primary funded provider of mental health legal services in Victoria was involved throughout the project's design and delivery, and have committed to implementing these principles and establish more supportive organisational cultures within the framework of broader service system reform. In doing so, each provider has committed to implementing these principles as part of their service agreements for state funding, and co-designing their legal practice. Implementation will rely on a range of approaches, including training, supervision, role-modelling, policy, procedure and bottom-up and top-down cultural diffusion. The *Principles* themselves are designed to be revisited and revised, consistent with an ongoing co-design, co-production, and evaluation process.

¹ Victorian Government, 2021, *Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform*, Parl Paper No. 202, Session 2018–21, 397-398.

² 'Consumer' refers to people who have a lived experience of using public mental health services. There is a diverse range of individual preferences regarding language in the space of mental health. See Victorian Mental Illness Awareness Council, 2019, The VMIAC Declaration, viewed 1 November 2019, <www.vmiac.org.au/declaration/>.

Address the following Criteria (max. 5 X A4 pages).

Judges allocate marks to each criterion

1. Evidence of innovation and/or recognised best practice.

The *Principles* form the basis for how all future mental health legal services will be provided in Victoria. They were central to the service modelling for how legal representation in Victoria's mental health system will be funded and delivered to implement the Royal Commission recommendations. Steering Committee members representing stakeholders across the system endorsed the document.³ Victoria Legal Aid (VLA), as the primary funded provider of legal representation services for consumers in Victoria at risk of compulsory treatment, along with the Mental Health Legal Centre (MHLC) and the Victorian Aboriginal Legal Service (VALS) have committed to implementing the principles into their practice with consumers.

The *Principles* contribute a new way of looking at how to design, deliver and evaluate legal services in Mental Health Tribunal processes, by centring the perspective of consumers who have been subject to these processes. Consumer expertise and perspectives have been acknowledged as a central gap that needs to be addressed in research and legal service delivery,⁴ aligning with participatory, consumer-led approaches to reforms in the wider mental health system.⁵ Yet no research was identified in the wider grey or academic literature that asked consumers what they wanted from their lawyers to guide legal service provision, and very few empirical studies have asked what consumers want from lawyers in mental health jurisdictions more widely.

It is crucial that lawyers are familiar with and uphold human rights for their clients. When clients have legal representation at the Mental Health Tribunal, they are more likely to experience less restrictive outcomes, as highlighted by the findings from the Royal Commission,⁶ and the Victorian Mental Health Tribunal.⁷ Legal representation at hearings plays an essential role in ensuring that clients' human rights are upheld, as it increases access to justice and procedural fairness for clients. Legal representation ensures a way for clients to be involved in their hearing, be listened to, and have a voice. The *Principles* provide a way for lawyers to fulfil these responsibilities and work consistently with their client's instructions and their legal, professional and ethical obligations and standards of context. They are part of state funded service agreements, and will feed into co-produced training.

As a short-term, targeted project, the *Principles* required the project team to work out how to genuinely implement co-design strategies within an extremely limited time-frame and budget, established as part of the process of modelling how the service system and Victorian Government could respond to and implement

³ See the response to Question 3 for more information on this group.

⁴ Fritze, E., 2015, *Shining a Light behind Closed Doors*, Winston Churchill Memorial Trust of Australia, viewed 15 July 2022, <<https://apo.org.au/node/66590>>.

⁵ Macgregor, A., 2022, 'Meaningful participation or tokenism for individuals on community based compulsory treatment orders? Views and experiences of the mental health tribunal in Scotland', *Journal of Mental Health*, 31(2), 158-165, 158.

⁶ Victorian Government, 2021, *Royal Commission into Victoria's Mental Health System, Final Report, Volume 4: The fundamentals for enduring reform*, Parl Paper No. 202, Session 2018–21, 398.

⁷ Taylor-Sands, M., Nicholson, Z., 2020, 'The role of the Mental Health Tribunal in setting duration of compulsory treatment in Victoria', *Psychiatry, Psychology, and Law*, 28(3), 343-362.

Recommendation 56(3) of the Royal Commission. This short time frame was the result of the sheer urgency of implementing this recommendation properly and well. By responding to and centring the specific needs of consumers at the Mental Health Tribunal within these constraints, the project team were able to develop the first document explicitly designing how legal services should work from the perspective of people who had been subject to these processes. In doing so, the *Principles* work to shift the practice of mental health lawyers in Victoria, and establish a framework for continual co-development and co-evaluation.

The impact of the *Principles* has been recognised through receiving a Highly Commended Vice-Chancellors Research Award for Excellence in Industry Engagement at La Trobe University.

2. Evidence of participation of mental health consumers in the planning, implementation and evaluation of mental health service delivery. Evidence of prioritising increased level of engagement and influence of consumers and where higher level participation such as authentic co-design is highly favoured.

There may be exceptions to the involvement of mental health consumers. Some entries may reasonably explain any particular circumstances where the involvement of mental health consumers is different or limited.

Consumers were highly involved throughout each stage of the project through co-design processes.⁸ To implement recognised best practice principles, the project team was led by people with lived experience of compulsory treatment, along with lawyers, Mental Health Tribunal Members and mental health academics. The team consisted of Pan Karanikolas (project co-lead), Associate Professor Chris Maylea (project co-lead), Hamilton Kennedy, Sarah McClelland, Professor Penelope Weller, Professor Lisa Brophy, Professor Stuart Thomas, Associate Professor Robyn Martin, Stephanie Stewart and Esther Le Couteur. Dr Piers Gooding provided expertise relating to supported decision-making in legal contexts. Independent Mental Health Advocacy (IMHA)'s consumer advisory group, *Speaking From Experience*, provided leadership and guidance to the wider project team at every stage of project development and delivery.

The timeline for the project was extremely limited, based on Steering Committee meetings held between 26 April and 5 August 2022, and an overall six-month timeframe. This made working out how to genuinely implement co-design strategies within strict limitations difficult, requiring ongoing collaboration between the team, the advisory group and other stakeholders. Consumers were invited to participate directly via IMHA and the Victorian Mental Illness Awareness Council (VMIAC). As the project sought to primarily speak to people who had experienced involuntary

⁸ The team drew on co-design strategies adopted from: Daya, I., 2020, 'The participation ladder: A consumer/survivor lens', *The Blog that Shouldn't Be Written*, viewed 20 March 2023, <http://www.indigodaya.com/wpcf7_captcha/2020/10/Participation-ladder_consumer_survivor-lens-2.pdf>; Roper, C., Grey, F. and Cadogan, E., 2018, *Co-production: Putting Principles into Practice in Mental Health Contexts*, viewed 20 March 2023, <https://healthsciences.unimelb.edu.au/__data/assets/pdf_file/0007/3392215/Coproduction_putting-principles-into-practice.pdf>.

mental health treatment and either been eligible for, or accessed lawyers at the Mental Health Tribunal, posters were put up around public inpatient units and an in person meeting was held with the consumer advisory group at Thomas Embling Hospital. The team spoke to 84 consumers and 88 sector stakeholders through a mix of interviews and focus groups, with participants provided with opportunities to provide additional input in writing or through surveys. Focus groups were held both online and face-to-face to enable participation. Each interview and focus group was co-facilitated by a researcher with lived experience.

Data analysis was undertaken using qualitative and quantitative methods, guided by co-design and co-development principles that involved. Quantitative data were provided by VLA and the Mental Health and Wellbeing Division of the Victorian Department of Health. A review of the existing literature identified an absence of grey or peer-reviewed research asking people who had experienced Mental Health Tribunal proceedings what matters to them, or what effective legal representation or best practice would look like. Given the extreme consequences these proceedings have on the lives, human rights and autonomy of people subject to compulsory treatment, the project team sought to fill this gap and directly understand, from consumers, what good legal representation would mean to them.

The *Principles* provide a non-binding guideline, as not all legal services in the sector are provided by funded services. Representatives from VLA, MHLC and VALS were involved throughout their development through a working group, to ensure the final framework is appropriate for implementation. All three primary providers of funded legal services at the Mental Health Tribunal have approved of the *Principles*, which now underpin their process of service modelling and commitment to genuine co-design throughout the re-design of Victorian mental health legal services more widely.

3. Evidence of partnerships and linkages with all key stakeholders (collaboration for continuity between organisations).

The project team worked closely with current legal services providers, including VLA's Mental Health and Disability Law (MHDL), which provide the majority of current legal services, and IMHA, who provide Victoria-wide non-legal advocacy. MHLC and VALS both provide legal and some support services, and were involved throughout. VMIAC, which provides advocacy services for voluntary consumers, chaired regular Steering Group meetings with representatives from the Lived Experience Branch of the Victorian Department of Health.

The Steering Group consisted of representatives across the Victorian mental health system and the Department of Health, in particular the Lived Experience Branch. Along with legal service providers, representatives from Tandem, the representative body for carers, family members and supporters; the Mental Health Complaints Commission; the Office of the Public Advocate; Forensicare and major public hospitals that provide clinical mental health services were present at all Steering Committee meetings to provide guidance and oversight, and endorse all project reports and decisions.

The project team included researchers across a range of institutions, working in collaboration from La Trobe University, RMIT University and the University of Melbourne.

The project team consulted with key stakeholders including:

- Consumers with experience of using legal and non-legal advocacy services
- Lived experience and peer workers
- Family and supporters, including Tandem
- Department of Health Lived Experience Branch
- Safer Care Victoria
- Clinical Mental Health service providers, including Forensicare
- Office of the Public Advocate, including Community Visitors
- Mental Health Complaints Commissioner
- The Victorian Mental Health Tribunal, including MHT Lived Experience Group
- The Victorian Aboriginal Legal Service
- Victorian Transcultural Mental Health
- Other stakeholders as identified, including First Nations and Culturally and Linguistically Diverse community organisations

As described above, all Steering Committee members endorsed the final framework, and the providers of legal services at the Mental Health Tribunal in Victoria have committed to co-designing the implementation of the *Principles* and service modelling.

4. Evidence of impact on mental health recovery.

The twelve principles, by outlining what a good experience of legal representation means to consumers themselves, are the first of their kind. The primary providers of mental health legal services in Victoria have committed to implementing these principles, which will widely impact the ways in which people subject to compulsory treatment and Mental Health Tribunal processes experience working with lawyers and legal representatives. They aim to shift practice, and change how people experience accessing lawyers, in the hope of supporting people in accessing and enforcing their legal rights.

The *Principles*, attached in the Appendix, are as follows:

1. Promote human rights and foster access to justice
2. Use a person-centred approach
3. Support decision making
4. Be trauma-informed
5. Provide inclusive legal services
6. Ensure culturally appropriate services for First Nations people
7. Respect a client's choice of lawyer
8. Working collaboratively with other supports
9. Timely and accessible communication
10. Lawyers must receive co-designed and co-delivered training
11. Be accountable to clients
12. Advocate for systemic change

Each principle was developed through initial consultations in interviews and focus groups with consumers who had experienced these processes, drafted by Karanikolas and the project team, and then further workshoped with the co-design group. Consumers consistently told us that they expect lawyers to provide representation and advocacy in ways that are grounded in human rights. This includes understanding that compulsory treatment, seclusion, restraint, and detention infringe upon human rights and that all people with disability should be

able to enjoy their human rights on an equal basis with others, as set out in the *United Nations Convention on the Rights of Persons with Disabilities* and the Victorian Charter of Human Rights and Responsibilities. This includes approaches that centre each individual client, and support decision-making to enable clients to provide instructions and develop a supportive relationship.

Throughout these processes, consumers also described how they expect inclusive and culturally appropriate services. Further detail on what this means is provided in the descriptions of each principle themselves, but consumers similarly emphasised the need to be treated with respect, for lawyers to be accountable to their clients, and to communicate in accessible and appropriate ways.

Across the course of the project, consumers raised challenges and human rights violations they had experienced within Mental Health Tribunal and compulsory treatment processes that were beyond the scope of individual legal assistance. They consistently emphasised, however, the key role lawyers can play in influencing law reform and calling attention to necessary systemic changes. In committing to the *Principles*, legal services in Victoria have committed to highlighting and challenging structural factors that impact consumers' human rights, through systemic advocacy, policy and law reform efforts, including strategic litigation and appeals. As with all elements of the *Principles*, systemic advocacy requires a commitment to consumer leadership and partnership.

Ultimately, the *Principles* are not a static document, but are subject to further development. They provide a guide for Victorian lawyers in providing legal representation and advocacy. It will be the responsibility of each legal practice to implement these principles across individual practice, organisational culture, and broader service system reform. As emphasised in Principle 10 and across the document, they aim to foster further co-design through training, supervision, role-modelling, policy, procedure and both bottom-up and top-down cultural diffusion. For them to deeply impact how services are provided, they need to be consistently revisited and revised in ways that are consistent with ongoing co-design, co-production and evaluation processes. This ongoing commitment to co-design and co-production across Victorian mental health legal service providers, and enlivening the rights and services envisioned in the *Principles*, marks a fundamental shift in how services are perceived and provided in the state.

Conclusion (1/2 x A4 page).

The *Principles* are the first document to co-design what legal services for consumers should look like in Victoria, based on what people subject to these systems say they want. As a short-term, targeted response to the process of implementing Royal Commission recommendations, the project required team members to work out how co-design could be implemented within a narrow six month timeframe. By doing so, and involving key stakeholders and legal service providers throughout, the *Principles* themselves mark a commitment to changing how Victorian mental health lawyers work, and the level of genuine consumer leadership now expected as a minimum standard across services.

Consumers who have been subject to compulsory mental health treatment at the Mental Health Tribunal were central throughout this process, and the project team is

grateful to the people who spoke with us, contributed to the project and *Principles*, and trusted us with their experiences. While the *Principles* establish a resource to influence and shape legal practice in the mental health system, this will require the ongoing input and leadership of people with lived experience of this system.

Referees (1/2 x A4 page).

Nominate two referees.

Helen Makregiorgos
Program Manager, IMHA and IFAS
Civil Justice Program
Victoria Legal Aid

Danilo Di Giacomo (he/him)
Director, Consumer
Lived Experience Branch
Mental Health and Wellbeing Division, Department of Health

Appendix of Support Material (max. 4 x A4 pages).

The full *Principles* document can be found at: <https://doi.org/10.26181/21218408.v3>.

The four pages of *Principles* themselves are provided below.

Page and word limits must be strictly adhered to. Any submission that exceeds the stated maximum will not be accepted and returned for review.

Links to other documents or websites may only be included in the Appendix/Supporting Material Section (2xA4 Pages) and are not to be included anywhere else in the submission. Links to other documents or websites in the main submission will not be considered by the judges.

Please directly copy all content/essential information to be reviewed by the judges in the main submission as links within the Appendix/Supporting Material Section will only be viewed at the judges' discretion.

Principles of consumer-centred lawyering

Principle 1: Promote human rights and foster access to justice

Consumers told us they expect lawyers to approach their legal representation and advocacy in ways grounded in internationally recognised human rights. This includes an understanding that compulsory treatment, seclusion, restraint, and detention infringe upon human rights and that all people with disability should be able to enjoy their human rights on an equal basis with others, as set out in the *United Nations Convention on the Rights of Persons with Disabilities* ('CRPD') and the Victorian Charter of Human Rights and Responsibilities.

The CRPD recognises that all people with disabilities have the right to enjoy all human rights on an equal basis with others, including the right to liberty and security of person, which requires that the existence of a disability shall in no case justify a deprivation of liberty; the right to equal recognition before the law; the right to the highest attainable standard of physical and mental health, including on the provision of services on the basis of free and informed consent; and the right to freedom from torture or cruel, inhuman, or degrading treatment or punishment.

Principle 2: Use a person-centred approach

Consumers told us that it is vital that lawyers build supportive relationships with clients. Consumers told us that they want lawyers to take a holistic view of the person, putting the client's wants, needs, meanings and interpretations at the centre. Clients want to feel heard and supported by their lawyer. Clients told us that lawyers are essential because when lawyers listen, support, and understand the person, they feel heard and believed by a party external to the mental health system.

Clients highly value and prioritise assertive advocacy from lawyers in achieving their individually desired outcomes at the Mental Health Tribunal. Overwhelmingly, consumers identified Mental Health Tribunal outcomes such as revocation of orders for compulsory treatment and respect being shown for their right to make decisions regarding their treatment as their highest priorities.

Clients should be able to expect and receive strong advocacy and representation from their lawyers, based on the client's instructions, in line with legal, professional, and ethical obligations and standards of conduct.

Principle 3: Support decision making

Clients sometimes need support to exercise their legal capacity. Lawyers should use supported decision-making approaches to enable their clients to provide instructions and participate in making decisions about their treatment and care. Supporting a client to make decisions and provide instructions may require more time to understand the client's support needs and develop a supportive relationship.

Supported decision-making is consistent with a lawyer's duties under the *Legal Profession Uniform Law Australian Solicitor's Conduct Rules* (2015) (Rule 7.1), which provides that lawyers must provide clear and timely advice to assist a client to understand legal issues and make informed choices about the action to be taken. Lawyers should assume clients have legal decision-making capacity but recognise that they may have to provide additional support to enable clients to give instructions. Any steps to support a client in exercising their legal capacity should occur in accordance with the person's rights, will and preference.

Principle 4: Be trauma-informed

Lawyers must be trauma-informed, with an understanding of social and other models of distress. Lawyers should provide legal representation and advice in ways that are sensitive to the client's lived experiences of trauma, oppression, disadvantage, and stigma. Lawyers who are not sensitive to these needs risk exacerbating their client's experiences of trauma and worsening their mental health.

Compulsory treatment, seclusion and restraint are coercive practices that are profoundly traumatising for many people and infringe upon people's human rights. Consumers also told us that the Mental Health Tribunal could be an adversarial, formal, intimidating, and disempowering process that contributes to experiences of trauma and distress. Therefore, lawyers must provide trauma-informed support to clients by being aware of and sensitive to trauma and adjusting their communication and approach in line with the client's instructions.

There is a range of resources that can be accessed on trauma-informed practice in legal contexts.⁹

Principle 5: Provide inclusive legal services

People from a range of communities are at an elevated risk of discrimination and other human rights violations in the mental health system. All clients should be able to expect to have their identity, culture, language, communication needs, age, disability, religion, gender identity and sexuality respected by their lawyer. Lawyers should actively challenge discriminatory practices in the mental health system when consistent with their client's instructions and within the scope of their role.

People from culturally and linguistically diverse backgrounds, particularly those who require an interpreter, are at greater risk of being placed on compulsory orders.¹⁰ Clients who experience linguistic and cultural barriers, particularly those from non-English speaking backgrounds, must be provided with communication support where necessary, including the timely provision of independent interpreters and the translation of written material. Support persons may also require interpreting services and other supports.

Women are more likely to experience gender-based violence as inpatients of mental health facilities¹¹ and while living in the community, including experiences of family violence.¹² There is limited Victorian data collected by services or made available about LGBTIQ+ people's rates of experiencing seclusion, restraint, or compulsory treatment in mental health services. However, research consistently shows that lesbian, gay, bisexual, transgender and gender diverse communities experience exceptionally high levels of mental and suicidal distress¹³ and have experienced stigma and discrimination when seeking support from mental health services.¹⁴

Trans and gender-diverse clients can be supported by being referred to using their name (which may be different to what is recorded on official identity documents) and pronouns¹⁵ (the words we use to talk about someone when we're not using their name) through use of inclusive language.¹⁶

Restraint is used most disproportionately on young people (under 17) and older people (over 65 years).¹⁷ Older people report experiences of stigma and discrimination within services due to their age and having their support needs for mental distress dismissed.¹⁸ Hence, lawyers must take an age-appropriate approach when working with clients.

Principle 6: Ensure culturally appropriate services for First Nations people

First Nations people have a right to cultural safety and culturally appropriate services when accessing legal assistance and representation and have a right to have their distinct culture and identity recognised and responded to.¹⁹

Cultural safety is determined by the client and means "[a]n environment that is safe for people: where there is no assault, challenge, or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge, and experience, of learning, living, and working together with dignity and truly

⁹ Kezelman, C., Stavropoulos, P., 2016, 'Trauma and the Law: Applying Trauma-informed Practice to Legal and Judicial Contexts', BlueKnot Foundation. See also the podcast series 'The Trauma-Informed Lawyer', available at <thetraumainformedlawyer.simplecast.com/episodes>, viewed 26 September, 2022.

¹⁰ Kisely, S., Moss, K., Boyd, M., Siskind, D., 2019, 'Efficacy of compulsory community treatment and use in minority ethnic populations: A statewide cohort study', *Australia and New Zealand Journal of Psychiatry*, 54(1), 76-88.

¹¹ Watson, J., Maylea, C., Russell, R., Hill, N., McCallum, S., 2020, 'Preventing gender-based violence in mental health inpatient units', ANROWS.

¹² Australian Bureau of Statistics, 2017, *Personal Safety Survey*.

¹³ Delaney, M., Skerrett, K. K., Diego De Leo, D., 2015, 'Are LGBT populations at a higher risk for suicidal behaviors in Australia? Research Findings and Implications', *Journal of Homosexuality*, 62(7), 883-901; Swannell, S., Martin, G., Page, A., 2016, 'Suicide ideation, suicide attempts and non-suicidal injury lesbian, gay, bisexual and heterosexual adults: Findings from an Australian national study', *Australian and New Zealand Journal of Psychiatry*, 50(2), 145-153.

¹⁴ Karakaya, S., Yasmin, F. K., 2021, 'LGBT individuals' opinions about their health care experiences: A qualitative research study', *Journal of Nursing Management*, 29(1), 24-31.

¹⁵ 'What are pronouns?' TransHub. Available at: <www.transhub.org.au/101/pronouns>.

¹⁶ Victorian Government, 2021, *LGBTIQ+ Inclusive Language Guide*, <www.vic.gov.au/inclusive-language-guide>; ACON NSW, 2017, *A Language Guide: Trans and Gender Diverse Inclusion*, <www.acon.org.au/wp-content/uploads/2018/01/External-Language-Guide-17396_print_V13.pdf>.

¹⁷ Victorian Mental Illness Awareness Council, 2022, *How safe is my hospital? The Seclusion Report #3*, version 2.2. Victorian Mental Illness Awareness Council (VMIAC), 9, available at: www.vmiac.org.au/vmiac-seclusion.

¹⁸ Victorian Government, 2021, *Royal Commission into Victoria's Mental Health System, Final Report, Vol. 2: Collaboration to Support Good Mental Health and Wellbeing*, Parl Paper No. 202, 2018-21, 294.

¹⁹ Article 19, *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic).

listening.²⁰ An absence of racism is a critical component of cultural safety. The Australian Health Practitioner Regulation Authority defines cultural safety as

"determined by Aboriginal and Torres Strait Islander individuals, families and communities. Culturally safe practise is the ongoing critical reflection of health practitioner knowledge, skills, attitudes, practising behaviours and power differentials in delivering safe, accessible, and responsive healthcare free of racism."²¹

Cultural safety is also sometimes defined in terms of what is unsafe. For example, a service or situation is culturally unsafe if an Aboriginal person risks being demeaned, diminished, or disempowered or having their identity and wellbeing undermined.²²

Cultural competency is the ability of individuals and institutions to ensure fair and equal treatment outcomes and to ensure that service delivery and the workplace environment is free from racial discrimination. Cultural competency requires ongoing learning and a "sustained focus on knowledge, awareness, behaviour, skills and attitudes at all levels of [a] service".²³

Cultural awareness is a basic understanding of Aboriginal and Torres Strait Islander histories, peoples, and cultures. There is no commonly accepted practice to reflect cultural awareness, and the actions taken depend on the individual and their knowledge of Aboriginal and Torres Strait Islander culture. Cultural awareness is generally accepted as a necessary first step and a foundation for further development, but not sufficient for sustained behaviour change.

Lawyers must continually develop their cultural awareness and competency and provide culturally appropriate and safe services that are free of racism. They must be aware of the systemic racism, discrimination and inter-generational trauma experienced by First Nations people and how this shapes people's experiences with the mental health system.

First Nations people are over-represented in the mental health system and are restrained, secluded, and compulsorily treated at higher rates than the general population.²⁴ Lawyers should advocate for access to culturally appropriate and culturally safe mental health services for their clients, if instructed to do so. They should also be aware of culturally safe services, supports and programs, that may be relevant for their clients.

Publicly available resources have been developed to support lawyers in providing culturally safe and culturally appropriate legal services.²⁵ These resources can provide advice on how lawyers can connect and work with First Nations communities, connect and work with clients, and develop an understanding of how to communicate and conduct client interviews in culturally safe and appropriate ways.

Principle 7: Respect a client's choice of lawyer

Consumers told us that they should have a choice about who represents them. Wherever possible and appropriate, the right of clients to choose their lawyer should be respected, and clients should be supported to exercise their right to choose, for example, the gender of their lawyer. Clients should be able to receive legal services that are safe and appropriate for them.

²⁰ Williams, R., 1999, 'Cultural safety – what does it mean for our work practice?' *Australian and New Zealand Journal of Public Health*, 23(2), 213-214.

²¹ Australian Health Practitioner Regulation Authority, 2020, *The National Scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2025*,

²² National Aboriginal and Torres Strait Islander Health Worker Association, 2016, *Cultural Safety Framework*, 4.

²³ Bainbridge, R., McCalman, J., Clifford, A., Komla, T. K., 2015, *Cultural competency in the delivery of health services for Indigenous people*, Issues Paper No. 13, Closing the Gap Clearinghouse. Canberra: Australian Institute of Health and Welfare, and Melbourne: Australian Institute of Family Studies.

²⁴ Victorian Mental Illness Awareness Council, 2022, *How safe is my hospital? The Seclusion Report #3*, version 2.2. Victorian Mental Illness Awareness Council (VMIAC), 9, available at <www.vmiac.org.au/vmiac-seclusion>

²⁵ National Association of Community Legal Centres, 2017, *Connecting and Working with Aboriginal and Torres Strait Islander Communities, Organisations and Clients: A Guide for Community Legal Centres*; Community Legal Centres NSW, 2016, *Cultural Safety Workbook*; Kingsford Legal Centre, 2013, *Working with Aboriginal Clients at Kingsford: Service Provision Manual*; Legal Aid New South Wales, 2020, *Best Practice Standards for Representing Aboriginal Clients*.

Principle 8: Working collaboratively with other supports

Consumers noted that good legal advocacy and representation occurs when lawyers collaborate closely with other supports, with the consent of the client. This can include involving independent mental health advocates, peer support workers, carers, family members or supporters. Lawyers also have an important role to play in providing referrals to other relevant services and working collaboratively with advocates, as instructed to do so by their client.

Clients who are better supported will be better able to exercise their rights to participate in decisions and access justice.

Principle 9: Timely and accessible communication

Consumers told us that they could not always understand legal processes or communication from lawyers. Consumers want lawyers who communicate in a way that is accessible to them and enables them to participate in and understand not only their hearing, but also the outcome of the hearing and the options the client then has. Consumers told us they were not always clear about the legal outcome and options after the tribunal's conclusion.

Lawyers must provide clear and timely advice to clients so they can understand relevant legal issues and make informed choices about action to be taken. To do this when working with clients at the Mental Health Tribunal, it is important that lawyers adjust their communication to be accessible and responsive to the needs and communication preferences of their clients. This may include the use of an independent accredited interpreter with the requisite level of expertise for legal proceedings, and translated legal information.

A client may have other communication needs related to disability or experiences of trauma. A client's communication abilities, cognition or memory may be affected by the impacts of trauma and distress, effects of medications or treatment, cognitive impairments (such as dementia), physical pain, and/or a range of other factors. Others may rely on Alternative Augmentative Communication (AAC) methods to communicate when distressed or need documents available in plain or Easy English.

Principle 10: Lawyers must receive co-designed and co-delivered training

Lawyers should receive up-to-date training and education on applying these principles in practice, on the *Mental Health and Wellbeing Act 2022*, on supported decision-making and on other topics relevant to the practice of mental health law, including how to work with marginalised communities, working with carers, families and supporters, human rights in mental health law and trauma-informed practice.

Training should be co-designed by people with lived experience, as determined by the ongoing co-design and co-production process recommended as part of the development of these principles. Lawyers should be supported and encouraged to join and participate in communities of practice to develop their skills and refine good practice. Lawyers should be encouraged to engage in reflexive practice through supportive and reflective supervisory arrangements.

Principle 11: Be accountable to clients

Lawyers should be directly receptive to their client's feedback and use this to reflexively improve their practice. Lawyers must also provide clients with internal and external avenues for feedback and complaints.

Principle 12: Advocate for systemic change

Consumers consistently raised challenges and human rights violations beyond the scope of individual legal assistance before the Tribunal. Lawyers play an essential role by influencing law reform efforts and calling attention to necessary systemic level changes that promote human rights. Within their organisations, lawyers should use their practice experience to inform systemic advocacy, policy, and law reform efforts, including strategic litigation and appeals. Legal services should have systems for lawyers to draw attention to and challenge structural factors that constrain their own practice or prevent them from providing effective legal representation in line with these principles.

Lawyers have an essential role to play in helping clients understand their rights to complain to and access oversight bodies such as the new Mental Health and Wellbeing Commission and the Office of the Public Advocate. Legal services also have a role in providing feedback to mental health services and the Mental Health Tribunal to promote the rights of consumers.

This systemic advocacy should always be done in partnership with and guided by consumers.