

Inquiry into the Esther Foundation and unregulated private health facilities

Submission to Parliament of Western Australia
Education and Health Standing Committee

2 June 2022

Contents

Who we are	4
Introduction	5
The need for strong regulation over private health facilities.....	5
Supporting the National Quality Framework.....	7
Conclusion	9

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the Parliament of Western Australia's Education and Health Standing Committee ('the Committee') inquiry into the Esther Foundation and unregulated private health facilities.
2. While the Committee's inquiry is not investigating the criminal allegations made against the Esther Foundation, the ALA expresses our deep concern about the allegations of serious abuse made by former residents, staff and volunteers.
3. Private health facilities in Western Australia, and indeed across Australia, provide a variety of important health services to members of the general public. Many private health facilities provide services to treat and care for individuals who need mental health support, as well as support through addiction, such as alcohol and other drug (AOD) treatment services.
4. Patients who seek out, or are referred to, these private health services are vulnerable. These members of the public turn to private health facilities looking for help, safety and care, often when they cannot access public health facilities.
5. The ALA is concerned that the current regulatory landscape in Western Australia does not require even a minimum standard of care from private health facilities, or offer sufficient oversight over their operations and quality standards.
6. This submission will detail why strong regulation over private health facilities is essential in Western Australia, including providing legislative support for the National Quality Framework.

The need for strong regulation over private health facilities

7. While public health facilities are comprehensively regulated and audited by State and Territory Governments,² private health facilities are neither subject to such regulation or accountability. That includes private health facilities offering mental health support and AOD services in Western Australia.

² Including through the *Health Services Act 2016* (WA).

8. While the public system is highly regulated, its resources are stretched and it is operating at capacity. Public health facilitates, including mental health and AOD services, have long waiting lists.³ High demand for limited public health services and the urgency of care needed by many prospective patients necessitate that many turn to private health facilities for treatment.
9. Given the services offered in private health facilities are comparable to those offered in public health facilities, and that both types of health facilities service the general public broadly, it logically follows that a rigorous regulatory framework should cover both types of facilities.⁴
10. The ALA believes that self-regulation by, and self-accountability from, private health facilities is not appropriate.
11. The status quo, however, is that private health facilities like the Esther Foundation are not subject to governmental or external regulatory oversight or accountability regarding the services they provide. Even when the Western Australian Government has provided monetary or asset support to private health facilities, as the Western Australian Government has done for the Esther Foundation as recently as 2018,⁵ these facilities are usually not subjected to any regulatory conditions regarding standards of care and treatment.
12. Despite this lack of oversight, patients are referred by Western Australian Government agencies to programs at private health facilities like the Esther Foundation.⁶
13. The ALA contends that these dynamics are a danger to public safety. Ultimately, those caught up in the middle when something goes wrong are groups of very vulnerable members of the community.

³ Nicole Lee, 'Drug rehab: What works and what to keep in mind when choosing a private treatment provider', *ABC News* (online, 2 May 2018) <<https://www.abc.net.au/news/2018-05-02/drug-rehab-what-works-and-what-to-keep-in-mind-when-choosing/9718124>>.

⁴ Simone Henriksen and Dominique Moritz, 'Regulation: The panacea for private rehabilitation centres' (2018) 20 *Flinders Law Journal* 257, 267.

⁵ Joanna Trilling and Alicia Bridges, 'Esther Foundation, now subject to claims of sexual and psychological abuse, supported by multiple WA governments [sic]', *ABC News* (online, 8 April 2022) <<https://www.abc.net.au/news/2022-04-08/wa-esther-foundation-supported-by-state-government-for-years/100974904>>.

⁶ Michael Ramsey, 'The Esther Foundation: Troubled WA Christian rehab centre in administration amid abuse allegations', *Perth Now* (online, 21 April 2022) <<https://www.perthnow.com.au/news/wa/troubled-wa-rehab-centre-in-administration-c-6519107>>.

14. The ALA, therefore, urges the Parliament of Western Australia as a matter of public safety to create or update (where applicable) legislation which addresses the need for regulation over and oversight of private health facilities. Such legislation should include:
- a. Strict and mandatory licencing requirements explicitly incorporating minimum quality standards as a condition of accepting patients at private health facilities;
 - b. Mandatory compliance by private health facilities with quality standards, such as the National Quality Framework (as detailed below);
 - c. Mandatory reporting by private health facilities regarding compliance with the above standards;
 - d. Mandatory accreditation for private health facilities and auditing thereof via specific, approved accreditation standards; and
 - e. The creation of a strong disciplinary process should a private health facility not comply with the above legislative processes and quality standards.

Supporting the National Quality Framework

15. The National Quality Framework was released in 2018 and provides “a nationally consistent quality benchmark which consumers can expect from treatment providers”.⁷ The framework is applicable specifically to all AOD providers, including private health facilities.⁸
16. This framework embodies nine guiding principles which offer practical ways that any and all AOD facilities can improve the quality and safety of their services.⁹ The National Quality Framework also requires AOD services to obtain accreditation only via approved accreditation standards by 29 November 2022 in order to be deemed compliant.¹⁰ One accreditation

⁷ Department of Health, Commonwealth of Australia, *National Quality Framework for Drug and Alcohol Treatment Services* (Publication No 12149, 2018) 7.

⁸ *Ibid.*

⁹ *Ibid.* 8.

¹⁰ *Ibid.* 12.

standard option is the Western Australian Network of Alcohol and other Drug Agencies' *Alcohol and other Drug and Human Services Standard*.¹¹

17. The Ministerial Drug and Alcohol Forum, which is attended by all Commonwealth, State and Territory ministers for health or community services, has endorsed the National Quality Framework.¹²
18. State and Territory Governments are responsible for enforcing these national standards, including enshrining through regulation a commitment that private health facilities – those that receive government funding, and even those private health facilities that do not receive any government funding – adhere to these national standards.¹³
19. While Western Australia has endorsed the National Quality Framework,¹⁴ comprehensive regulatory processes to bring all private health facilities into the framework have been lacking.¹⁵ When addressing the Parliament of Western Australia to request that the Committee undertake this inquiry, Minister for Community Services the Hon. Simone McGurk MLA noted that “without appropriate regulatory processes being in place, only funded services are bound to adopt the framework”.¹⁶
20. The ALA urges the Parliament of Western Australia to pass legislation that:
 - a. requires private health facilities offering AOD services, regardless of whether they do or do not receive government funding, to provide services that comply with the National Quality Framework;

¹¹ See: Western Australian Network of Alcohol and other Drug Agencies, *Alcohol and other Drug and Human Services Standard* (June 2019).

¹² Department of Health, Commonwealth of Australia, *National Quality Framework for Drug and Alcohol Treatment Services* (Publication No 12149, 2018) 5.

¹³ *Ibid* 7.

¹⁴ Ministerial Drug and Alcohol Forum, ‘Development of a National Quality Framework for Alcohol and Other Drug Treatment Services (National Quality Framework)’ (Communiqué, 14 June 2018).

¹⁵ Western Australia, *Parliamentary Debates*, Legislative Assembly, 7 April 2022, 1784b-1785a (Simone McGurk, Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services).

¹⁶ *Ibid*.

- b. requires private health facilities offering AOD services, regardless of whether they do or do not receive government funding, to obtain accreditation with at least one of the accreditation standards in order to be compliant with the National Quality Framework; and
- c. ensures compliance monitoring, supports regular auditing processes, and provides for appropriate and swift responses if a private health facility does not comply with the National Quality Framework.

Conclusion

- 21. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Parliament of Western Australia Education and Health Standing Committee's inquiry into the Esther Foundation and unregulated private health facilities.
- 22. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.



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