



Minister for Mental Health

Cabinet Material: Mental Health Bill: Approval for Introduction

1 October 2024

These documents have been proactively released by the Ministry of Health on behalf of the Minister for Mental Health, Hon Matt Doocey.

Title of Cabinet paper: Mental Health Bill: Approval for Introduction

Titles of minutes:

- Report of the Cabinet Legislation Committee: Period Ended 20 September 2024 (CAB-24-MIN-0376)
- Mental Health Bill: Approval for Introduction (LEG-24-MIN-0184)

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction codes:

- Out of scope.
- S 9(2)(f)(iv) to maintain the constitutional conventions that protect the confidentiality of advice tendered by Ministers and officials.
- S 9(2)(h) to maintain legal professional privilege.



Cabinet

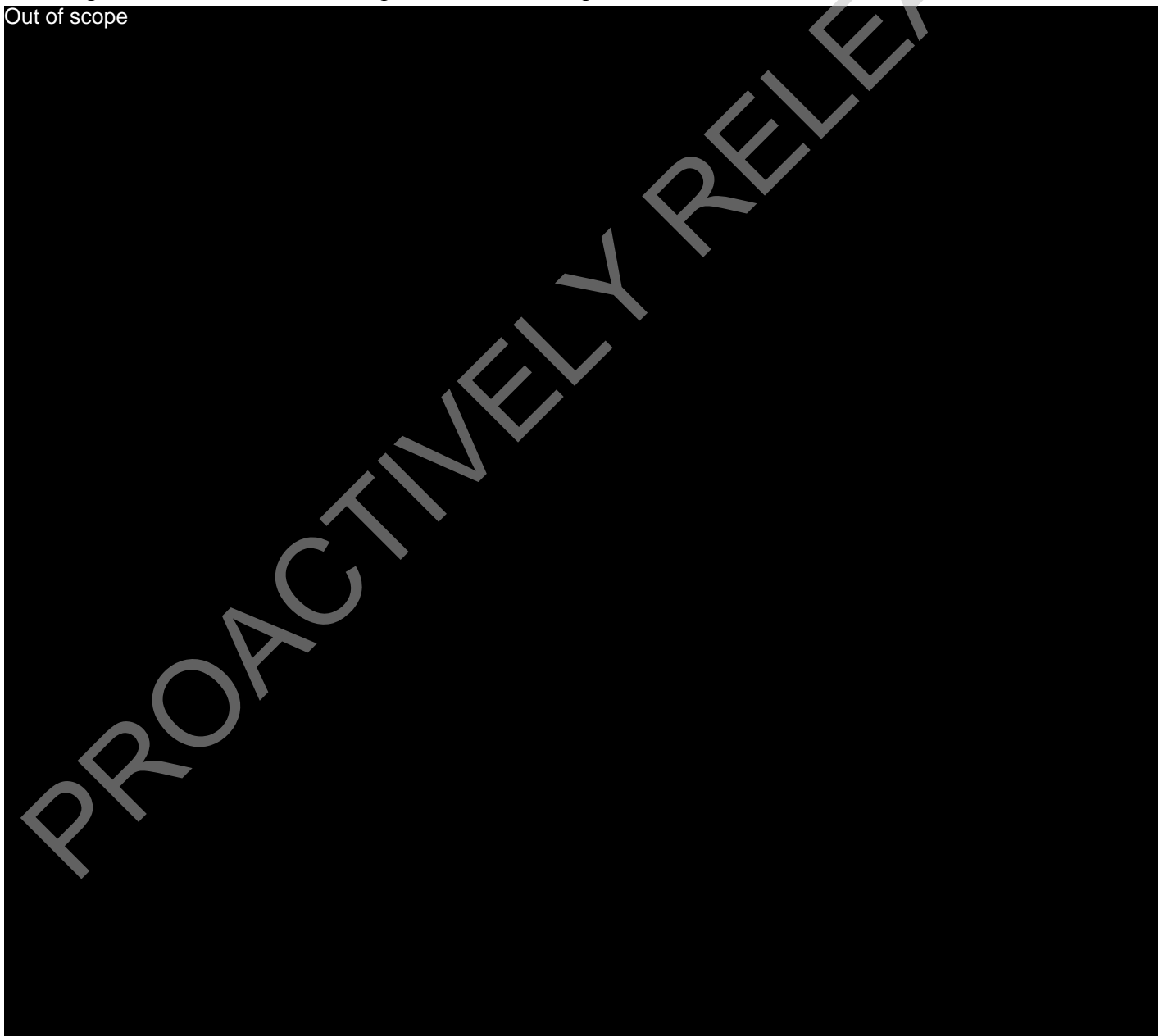
Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 20 September 2024

On 23 September 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 20 September 2024:

Out of scope

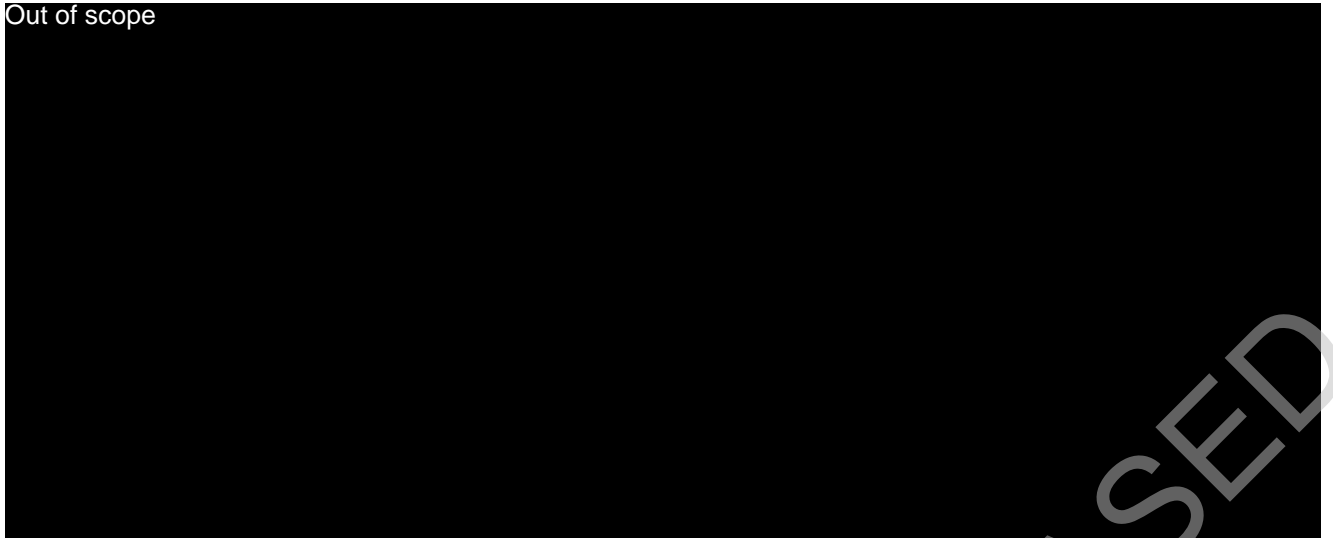


LEG-24-MIN-0184

Mental Health Bill: Approval for Introduction
Portfolio: Mental Health

CONFIRMED

Out of scope



Diana Hawker
for Secretary of the Cabinet

PROACTIVELY RELEASED



Cabinet Legislation Committee

Minute of Decision

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Mental Health Bill: Approval for Introduction

Portfolio Mental Health

On 19 September 2024, the Cabinet Legislation Committee:

- 1 s 9(2)(h)
- 2 s 9(2)(f)(iv)
- 3 **noted** that the purpose of the Bill is to provide for compulsory mental health care that:
- 3.1 promotes the decision-making capacity of the person;
 - 3.2 improves equity in mental health outcomes among New Zealand's population groups;
 - 3.3 protects the rights of people under the legislation;
 - 3.4 protects the safety and wellbeing of people under the legislation and all other New Zealanders;
- 4 **approved** the Mental Health Bill [PCO 21842/5.7] for introduction, subject to the final approval of the Government caucuses and sufficient support in the House of Representatives;
- 5 **agreed** that the Bill be introduced in early October 2024;
- 6 **agreed** that the Government propose that the Bill be:
- 6.1 referred to the Health Committee for consideration;
- s 9(2)(h)

Tom Kelly
Committee Secretary

Attendance: (See over)

Present:

Rt Hon Winston Peters (Chair)
Hon Nicola Willis
Hon Shane Jones
Hon Brooke van Velden
Hon Dr Shane Reti
Hon Judith Collins KC
Hon Mark Mitchell
Hon Tama Potaka
Hon Casey Costello
Hon Nicole McKee
Hon Matt Doocey
Hon Andrew Bayly
Hon Scott Simpson, MP
Jamie Arbuckle, MP
Todd Stephenson, MP

Officials present from:

Officials Committee for LEG
Ministry of Health

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In Confidence

Office of the Minister for Mental Health

Cabinet Legislation Committee

Mental Health Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Mental Health Bill (the Bill). The Bill will repeal and replace the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act).

Policy

Why the Bill is needed

- 2 The Act sets out the rules for when the government may intervene in a person's life to provide mental health treatment without their consent. Most people in New Zealand who access specialist mental health and addiction services are not subject to the Act. In 2021/22, 11,149 people (6.4% of specialist mental health and addiction service users) were under the Act. However, for those that have been subject to compulsory mental health care, it can have lifelong impacts on their ability to live independently and engage productively in their communities.
- 3 When the current Act was introduced, it was considered ground-breaking and reflected a shift away from treatment in psychiatric institutions to greater support in the community. However, the Act is now over 30 years old, and it continues to be subject to longstanding criticism and scrutiny both domestically and internationally. This includes an ongoing legal challenge in the courts on the human rights implications of the current Act.
- 4 Modernising mental health legislation is part of my programme of work to build a mental health and addiction system that New Zealanders need and deserve [SOU-24-SUB-0054 refers]. The shifts I want to see are constrained by the limits of the current Act, as it does not adequately provide for supported decision-making, nor align well with recovery and rights-based approaches to mental health care. This was recognised by the independent inquiry *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*, which recommended the Act be repealed and replaced, as well as by submitters to the public consultation completed in 2022.

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s 9(2)(f)(iv)

s 9(2)(f)(iv)

This Bill supports a future focus on safe and effective mental health care for people that require State intervention, including through independent advocacy, safer practice through stronger protections for people subject to legislation, as well as greater involvement of a person's family in key processes.

6 Compulsory mental health care is a critical safety net when urgent intervention is needed as a last resort. I want people to be at the centre of their own care and provided with care that is responsive to their individual needs. I expect that once embedded, new legislation will improve how we support people to manage their mental health needs, reducing the need for people to enter or re-enter compulsory care.

7 Cabinet agreed in 2019 to repeal and replace the Act [CAB-19-MIN-0182 refers] and in December 2022 and July 2023, agreed to a suite of policy proposals in line with the recommendation of the independent inquiry [SWC-22-MIN-0234 and SWC-23-MIN-0096 refer].

8 s 9(2)(h)

9 The Bill contributes to the Government's priority of delivering better health outcomes, in particular, improving mental health and addiction outcomes.

What the regulatory regime in the Bill covers

10 The Bill sets out the regime for when a person can be subject to compulsory mental health care without their consent. It also sets out the processes for 'forensic patients', these are patients that enter the health system via the criminal justice system. This covers people found by the courts to be unfit to stand trial or acquitted on account of insanity (as defined in the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP) Act)), and people transferred from prison who require compulsory care, to receive mental health treatment in a secure environment.

11 The purpose of the Bill is to provide for compulsory mental health care that:

11.1 promotes the decision-making capacity of the person

11.2 improves equity in mental health outcomes among New Zealand's population groups, including for Māori

11.3 protects the rights of people under legislation

11.4 protects the safety and wellbeing of people under the legislation and other New Zealanders.

12 The Bill contains the following:

Principles	Principles to guide decision-makers that focus on ensuring care has a therapeutic purpose, is the least restrictive possible and is supportive and responsive
Descriptive clause	A descriptive clause that sign-posts other areas in the legislation that will help give effect to the Crown's obligations under the Treaty of Waitangi, providing clarity to clinicians and others applying the legislation
Compulsory care criteria	Legal criteria allowing the use of compulsory care when a person has a serious need and would benefit from its use, serious adverse effects would otherwise occur, and the person does not have decision-making capacity relating to their mental health care
Statutory processes	Statutory processes that must be followed to determine whether a person meets or continues to meet the criteria, including safeguards for reviewing decisions about a person's legal status and care
Supported decision-making	A range of approaches and requirements to support people to make decisions about their own care either in advance of becoming unwell or when they are subject to the legislation
Providing compulsory care	Requirements for providing compulsory care, including the range of experts that must be involved, the requirement for care to be delivered in accordance with a care plan that is responsive to the needs of the person (including their mental, physical, cultural and social needs), and requirements for involving family and whānau in a person's care, based on the preferences of the person
Rights & complaints	Updates to complaints processes and rights for people subject to the legislation, including rights that will apply to voluntary patients receiving inpatient mental health services
People in the justice system	Processes and requirements relating to people transferred from the justice system including provisions relating to victims' rights, which are retained from the current Act. Decisions relating to status and long leave will move from the Minister to a new forensic review tribunal. Changes to the entry criteria in the Bill will not apply to forensic patients whose status is conferred under the CP(MIP) Act, their status will continue to be governed by that legislation
Restrictive practices	Updates to the requirements to support a more limited use of seclusion, restraint, and other restrictive practices, with the ability to further limit the use of seclusion through regulations
Oversight & administration	Statutory roles to administer the legislation and undertake functions including the existing Director of Mental Health, district inspectors and review tribunals, alongside new roles, including independent support persons and advocates. The Bill largely retains the corresponding powers and offences. Powers of Police have been retained with clarifications to ensure Police to have necessary powers to respond in emergency situations
Monitoring & reporting	Mechanisms to monitor and report on the operation of the legislation, including to regularly review the legislation

- 13 A broad outline of the Bill's core proposals is included in the General Policy Statement.

Likely areas of interest when the Bill is considered by the Health Committee

- 14 There is a high level of public interest in new mental health legislation. While most stakeholders are likely to support new legislation and in particular the aspects relating to supported decision-making, the public consultation process completed in 2022 highlighted the diverse views across stakeholders on what should be in new legislation. Stakeholders included people with lived experience and their family and whānau, Māori, the mental health sector, clinicians, and the general public. I expect many individuals and groups will make submissions on the Bill once it has been referred to the Health Committee.
- 15 I anticipate the below areas will be of potential interest at Health Committee:
- 15.1 *Capacity test* – One of the criterion for authorising the use of compulsory care will include that a person's seriously impaired mental health is causing the person to lack capacity to make decisions about their mental health care.
- 15.2 *Seclusion and restraint* – Seclusion is where a person is placed alone in a room/area from which they cannot freely exit, and restraint refers to the use of physical force in various forms, including holding a person down, applying wrist restraints, or locking them in a particular area. The Bill allows further limits or prohibition of the use of seclusion through regulations once the system is ready.
- 16 I expect issues to be raised that relate to the implementation of the Bill and the wider mental health and addiction system. The Ministry of Health is already progressing a programme of work to support implementation, which will track alongside the development of the Bill to maximise the time to prepare the mental health sector and communities.
- 17 General system shifts not specific to the legislation are also taking place in the mental health and addiction system which will support the direction of the Bill. For example, broader changes are underway through the mental health and addiction infrastructure programme and investment in growing and upskilling our mental health and addiction workforces.

Impact analysis

- 18 Two regulatory impact statements were prepared in accordance with the necessary requirements and were submitted at the time that Cabinet approval of policy relating to the Bill was sought:
- 18.1 Regulatory Impact Statement: Transforming Mental Health Law [SWC-22-MIN-0234 refers]

- 18.2 Regulatory Impact Statement: Transforming Mental Health Law – Second Tranche of Policy Decisions [SWC-23-MIN-0096 refers].
- 19 The above Regulatory Impact Statements have been published on the Ministry of Health and The Treasury websites as required.

Compliance

- 20 The Bill complies with each of the following:
- 20.1 the principles of the Treaty of Waitangi
 - 20.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 – compulsory mental health care places significant limits on human rights, such as the rights to liberty, to refuse medical treatment, and to freedom from discrimination. The Bill is intended to ensure that these limits are reasonable and proportionate, and the minimum necessary to support people to access care when they are experiencing serious mental distress to support their safety and the safety of others
 - 20.3 the principles and guidelines set out in the Privacy Act 2020
 - 20.4 relevant international standards and obligations
 - 20.5 the [Legislation Guidelines](#) (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 21 Further details relating to the above are set out in the disclosure statement attached to this paper.

Consultation

Government departments or other public bodies

- 22 This paper was prepared by the Ministry of Health in consultation with the Ministry of Justice, New Zealand Police, Department of Corrections, Oranga Tamariki, Whaikaha, Te Puni Kōkiri and the Ministry of Social Development. The Department of the Prime Minister and Cabinet and The Treasury were informed.
- 23 The following public sector organisations were consulted during the policy development: Mental Health and Wellbeing Commission, Health Quality and Safety Commission, the Ombudsman and the offices of the Health and Disability Commissioner and Privacy Commissioner.

Public consultation

- 24 Ministry of Health undertook public consultation from October 2021 to January 2022 [SWC-21-MIN-0147]. Views were sought on what new mental health legislation should look like in New Zealand. Over 300 written submissions

were received, and feedback was gathered from over 500 people across 60 online consultation sessions.

- 25 Feedback was sought widely to ensure it was representative of key groups, including dedicated consultation streams with Māori and people with lived experience and their family and whānau. There were also dedicated consultation sessions for Pacific, Asian and ethnic communities, young people, people with lived experience with coexisting disabilities, the mental health sector including non-government organisations, clinicians, as well as the general public.

Expert Advisory Group

- 26 Following public consultation, a 12-member Expert Advisory Group was established to help test and refine draft policy proposals, bringing a range of perspectives including, Māori, people with personal or family and whānau lived experience of the current Mental Health Act, service providers and clinicians, as well as legal and academic expertise.

Coalition consultation and other parties represented in Parliament

- 27 I have consulted with Coalition parties.
- 28 I have informed the Mental Health and Addiction Wellbeing Cross-Party Group of the policy proposals in the Bill. This group includes representatives from all parties represented in Parliament.

Binding on the Crown

- 29 Cabinet agreed the Bill should include a provision stating that the Act will bind the Crown [SWC-22-MIN-0234 refers]. The Bill binds the Crown.

Creating new agencies or amending law relating to existing agencies

- 30 The Bill does not create a new agency or amend law relating to existing agencies.

Allocation of decision-making powers

- 31 The Bill provides that decisions about leave and change of legal status for forensic patients will be made by a review tribunal, when they were previously made by the Minister of Health. This change was recommended by the Law Commission in its 2010 review of the law relating to special patients. The Ministry of Justice guidelines have been followed in developing these provisions and the Ministry of Justice supports this change.

Associated regulations

- 32 Regulations are not required to bring the Bill into operation. The Bill includes provisions empowering the making of regulations by Order in Council for anything that this Bill says must or may be provided for by regulations.

Other instruments

- 33 The Bill includes provisions empowering the making of other instruments that are secondary legislation. These instruments will provide detail to support the application of the legislation (eg, standards and guidelines).
- 34 The explanatory note in the Bill sets out the reasons for provisions empowering the making of other instruments.

Definition of Minister/department

- 35 The Bill includes a standard definition of Ministry. The Bill refers to the Minister; a definition is not required as the Legislation Act 2019 provides a standard definition of 'Minister', which applies across all legislation unless specifically overridden.

Commencement of legislation

- 36 The Bill has a proposed commencement date of 1 July 2027. This is to ensure there is sufficient time to prepare affected services in the mental health sector as well as other impacted areas, such as the courts.

Parliamentary stages

- 37 I intend for the Bill to be introduced on 26 September 2024, subject to Parliament's timetable and confirmation from the Leader of the House. The Bill will then be referred to the Health Committee

Proactive Release

- 38 The proactive release of this paper will align with the introduction of the Bill. Release will be done in accordance with standard processes under Cabinet Office circular CO (18) 4, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 s 9(2)(h) [Redacted]
- 2 s 9(2)(f)(iv) [Redacted]
- 3 **note** that the purpose of the Bill is to provide for compulsory mental health care that:
 - 3.1 promotes the decision-making capacity of the person

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- 3.2 improves equity in mental health outcomes among New Zealand's population groups
- 3.3 protects the rights of people under legislation
- 3.4 protects the safety and wellbeing of people under the legislation and all other New Zealanders
- 4 **approve** the Mental Health Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives
- 5 **agree** that the Bill be introduced on 26 September 2024
- 6 **agree** that the government propose that the Bill be:
 - 6.1 referred to the Health Committee for consideration

s 9(2)(h)

Authorised for lodgement

Hon Matt Doocoy

Minister for Mental Health

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