Mental Health Bill

Overview of the Mental Health Bill as introduced into the House on 1 October 2024

Ministry of Health – Manatū Hauora

November 2024

Te Kāwanatanga o Aotearoa
New Zealand Government

MANATŪ HAUORA
MINISTRY OF HEALTH

Purpose of this document

This document has been prepared by the Ministry of Health. It provides an overview of:

- the scope and context for developing the Bill
- what the government heard through public consultation in 2021/22
- what the Bill is seeking to achieve
- the key areas of the Bill
- when the Bill will take effect.

Because this document only provides a summary of what is in the Bill, the best document to see the full details is still the Bill itself.

Links to the Bill and further information are set out at the end of this document.

What is the scope and context for developing the Mental Health Bill?

Scope of the Mental Health Bill

The Mental Health Bill (the Bill) will repeal and replace the current Mental Health Act

The Bill sets out the rules for when the State may intervene in a person's life to provide mental health treatment without their consent

This is called **COMPULSORY MENTAL HEALTH CARE**. It is intended to be a critical **safety net** for people when **urgent intervention** is needed

When people are subject to compulsory care they will either receive that care…

in the **COMMUNITY** – usually at their home

or if they cannot be cared for in the community, they will be in an **INPATIENT SETTING** – usually a hospital

People who are subject to the legislation come from all walks of life.

They represent every day New Zealanders experiencing mental distress at a level requiring State intervention to support their recovery

The legislation also sets out the processes for '**forensic patients**'. These are patients that enter the health system via the criminal justice system

In 2022/23 there were **384** forensic patients nationally

In 2022/23 there **were just over 11,00 people** subject to the current legislation

This represents approx. **6.2%** of the total 178,520 people who accessed **specialist mental health and addiction services** in that period

In 2022/23…

Māori were **3 times** more likely to be subject to compulsory assessment or treatment than other ethnicities

There were **408 people under the age of 18** subject to the legislation

Strategic context for developing the Bill

- The current Mental Health Act has been criticised for not reflecting contemporary approaches to mental health care and for being out of step with New Zealand's international human rights commitments.
- The Bill is intended to be a critical safety net for people that may need urgent intervention as a last resort.
- Legislation is one of many levers government can use to shift behaviours and improve outcomes. There are many factors that affect a person's mental health and wellbeing that cannot be addressed by legislation, such as expanding and improving access to mental health and addiction services.
- The Bill forms part of the response to *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction.* It also forms part of the Government's response to the *Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions.*
- The Bill is part of the broad programme underway to improve effectiveness of our mental health and addiction system which will support people accessing interventions and support earlier, to help prevent the need for entry or re-entry into compulsory mental health care.

Key inputs for developing the Bill

Developing the Bill has involved considering and balancing a range of information sources

STRATEGIC DIRECTION

The strategic direction for new legislation, for example the findings of *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*

KNOWN ISSUES

The longstanding issues and criticisms with the current Mental Health Act and how people experience it

AVAILABLE EVIDENCE

Available evidence from New Zealand and from comparable overseas jurisdictions

PUBLIC CONSULTATION

Feedback received through extensive public consultation on what new mental health legislation should look like in New Zealand

EXPERT ADVISORY GROUP

Feedback and advice from a Mental Health Act Expert Advisory Group, established to help test and refine policy proposals

CONSULTATION WITH AGENCIES

Engagement with government agencies who are impacted by the legislation

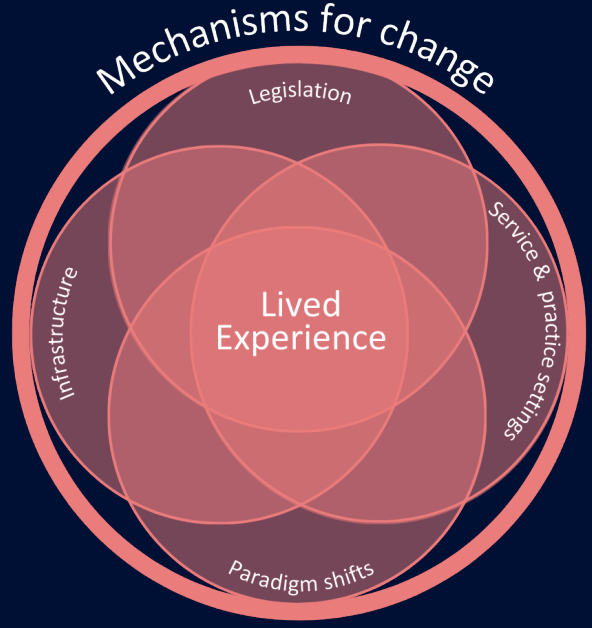
Consultation with organisations in the wider public sector and members of the judiciary

What did the government hear through public consultation undertaken in 2021/2022?

Feedback from public consultation undertaken in 2021/2022

The general overarching themes received through public consultation were:

- The need to align to human rights obligations with greater autonomy and self determination
- That the current Mental Health Act is being misused
- The desire for the Mental Health Act to be more person and family/whānau focused
- Te Tiriti o Waitangi | Treaty of Waitangi as the foundation of new legislation
- Environments and workforce
- Paradigm shifts are required.



Lived experience feedback

People with lived experience and their families who gave feedback in the public consultation in 2021/2022 outlined the care they want to receive in the future

Responds early

People wanted a system and services that respond early to social and psychological distress to prevent acute experiences developing. For example:

- Support across the mental wellbeing system are not siloed
- Support is networked rather than people and families networking them
- Families can access support even when their loved one is not connected to a service yet.

Holistic care

People wanted to be seen in their entirety, not just as a disorder or symptoms to be fixed. They wanted to be understood in the context of their lives, including their roles as parents, loved ones, and with expertise they could bring to their care.

- Attends to causes not 'symptoms'
- Understood within family and whānau relationships
- Shift in singular privileging of psychiatry.

Care where personhood & dignity are upheld

People spoke of wanting to maintain authority not only of their care but also their lives. They wanted services that maintained their dignity. Examples of how this this could occur:

- Decision making supports
- Advanced directives
- Physical environments that humanise.

Care that includes rather than secludes

People said that care needed to be less hostile and punitive which required the elimination of seclusion and greater reductions in restrictive practices. This would require:

- Changes to process and practice for assessment and admission
- Safe assessment spaces
- Improved police involvement
- Incorporation of cultural supports and practices.

Care that respects & actively protects rights

While people have a range of rights, they spoke of these not being respected or protected. Improvements could be achieved with:

- Independent advocates
- Mechanisms to monitor and protect are accessible, timely and resourced.

A system that learns & restores relationships

People wanted there to be an understanding that even though there is a positive intention, harm occurs through compulsion and there is a responsibility to repair and restore relationships with families, whānau and the health system.

- Mechanisms for listening and learning
- Action taken on the learning.

Lived Experience roles in all areas

People saw a place for increased lived experience involvement:

- Peer Support roles within care
- Peer Advocates providing timely and accessible support
- Lived experienced practitioners and roles involved in design, monitoring, protections and accountability.

Care in environments that enable humane care

There was a call for care in new environments like peer acute alternatives.

There were also recommendations that physical environments needed change to bring about humane care. They need to include sensory modulation, be culturally safe, have access to green spaces, be fit for purpose for family and whānau, and be culturally appropriate.

What is the Bill seeking to achieve?

The policy objectives

A set of policy objectives have guided the development of the Bill and set out what the Bill seeks to achieve.

The policy objectives are to create a modern legislative framework for compulsory mental health care that:

- shifts compulsory mental health care towards a rights-based and recovery approach
- enables responsive needs-based care, including culturally appropriate care, that addresses the need for compulsory care
- supports the safety of individuals and others
- supports people to make decisions about their mental health care and ensures those who have decision-making capacity are not compelled to receive mental health care
- minimises the use and duration of compulsory care, including minimising the need for people to re-enter compulsory care
- includes effective safeguards and mechanisms to monitor the use and operation of legislation and respect human rights.

What is in the Bill?

Foundations for person-centred care

The Bill has foundational elements to support the shift towards a rights-based and recovery approach to compulsory mental health care

What is in the Bill:

- New purpose statement
- New principles
- New descriptive clause.

Purpose statement

The purpose statement is intended to support the application of the new legislation towards a rights-based and recovery approach and better support care that meets the needs of people.

Principles to guide decision-making

Decision-makers under the legislation must be guided by the principles in the Bill. The principles will ensure that compulsory care should only:

- serve a therapeutic purpose
- be applied in the least restrictive manner
- be supportive and responsive.

Descriptive clause clarifying how the legislation will give effect to the Treaty of Waitangi | Te Tiriti o Waitangi

The descriptive clause sign-posts other areas in the Bill that will give effect to the principles of Treaty of Waitangi | Te Tiriti o Waitangi. This is intended to provide clarity to clinicians and others applying the legislation as well as people who are subject to the legislation.

Supported decision-making & greater protections

The Bill will ensure people are assisted and supported to make decisions about their own mental health care to the best of their ability even if they do not have capacity, or in advance of becoming unwell

What is in the Bill:

- New mechanisms people can put in place before becoming unwell
- New roles to ensure rights of patients are upheld
- New participation duty
- More robust family and whānau involvement
- Strengthened rights
- Improved complaints and review processes.

Preparation before a person is subject to the legislation

People will be able to:

- make a **compulsory care directive** that makes statements about their future care, this is like an advanced directive
- appoint **nominated persons** to represent their interests if they ever become subject to the legislation.

Independent support

Independent support people will assist people to understand their rights and participate in decisions.

People will also have access to **advocates** to assist them to exercise their rights. This includes representing them in processes in the Bill or making complaints for them.

These roles will be independent of other decision-makers in the Bill.

Participation requirements

Those responsible for key processes under legislation will have a duty to ensure people are **encouraged and assisted to participate in decisions** being made about them.

Family & whānau involvement

A person's **support network** can be involved in key processes and will be notified of key decisions and outcomes.

Hui whaiora (well-being meeting) will assist people to make decisions, resolve issues, and support restorative practices.

Hui whaiora involve the person, their support network, such as their family and whānau, and other professionals involved in their care.

Rights

A set of **rights** will ensure things like a person's right to information, and to independent health and legal advice.

There are corresponding duties on specific people to ensure rights are upheld.

Relevant rights extended to **voluntary patients** in inpatient units.

Complaints & reviews

Complaints can be made to district inspectors who are independent watchdogs. They will be guided by principles to ensure accessibility, timeliness and transparency.

There are **appeal and review processes** that apply at different stages of the process, including the right to seek review by the review tribunal, appeal to the court, or apply for judicial inquiry.

Compulsory care and safeguards for particular practices

Providing care that better meets people's needs on their recovery journey will help minimise the need for and duration of compulsory care

What's in the Bill:

- Updated criteria for someone to be subject to the legislation to ensure intervention is justified
- Clearer statutory processes
- New comprehensive care planning requirements
- More expertise to meet the person's needs
- More robust family/whānau involvement
- Tighter controls on certain practices and treatments.

Compulsory care criteria

To be subject to the legislation, a person must have seriously impaired mental health that causes or is likely to cause:

- serious adverse effects in the near future in the absence of compulsory care, and
- the person to lack capacity to make decisions about their own mental health.

Statutory processes

The statutory process sets out the different points at which a person must be assessed against the criteria to determine if they should be or continue to be, subject to the legislation.

If at any time a person's responsible practitioner considers they no longer meet the criteria they must be released.

At each process step in the process:

- decision-makers must have regard to the views of the person and their family and whānau. Decisions must also be guided by the compulsory care principles
- there are rights to seek review of or appeal against decisions.

Care planning

Once a person is subject to the legislation, they must have a care plan that is based on a holistic needs assessment. Care planning will include transition planning.

The care plan must be kept under review.

Care can only be provided in accordance with a person's care plan.

Expertise involved

A responsible practitioner will oversee a person's care.

Among other a responsible practitioner must ensure that a rōpū whaiora (collaborative care team) is in place with the expertise required to meet the person's needs.

Limtations, safeguards & protections for certain practices

There are limitations, safeguards and protections for certain practices including:

- ECT and restricted treatments
- tighter controls on the use of restrictive practices. In particular, seclusion where there will be a duty on people under the Act to reduce and eliminate seclusion, regulatory guidelines, mandatory reporting of use, ability to prohibit or further restrict use through regulations.

Meeting particular needs

The Bill has specific considerations and processes to ensure that care is responsive to a person's needs and that there are appropriate protections

What is in the Bill:

- Strengthened protections for children and young people
- Improvements for decisions about forensic patients
- Strengthened and new requirements to support care based on a person's needs, in particular cultural needs.

Children & young people

The legislation continues to apply to anyone regardless of age. This means other areas of the legislation apply to children and young people, for example supported decision-making requirements and rights.

If compulsory care is required, children and young people will have access to developmentally appropriate services and additional protections including in relation to ECT and seclusion.

People in the justice system

Existing processes and requirements for forensic patients will apply, including that they are to be cared for in the same way as other patients under the legislation.

A Forensic Patient Review Tribunal will make decisions about long leave and review the condition of forensic patients.

Care to meet the needs of the person, including cultural needs

A range of requirements to ensure responsive care based on a person's needs, for example:

- principle that compulsory care should reflect the needs of the person, including their cultural needs
- right to respect for a person's culture and identity
- a care plan based on a holistic assessment of the person including cultural considerations
- a wider range of experts involved in a person's care, including cultural expertise and expertise in lived experience of mental distress.

Administration, monitoring and oversight

The Bill includes strengthened monitoring, oversight and reporting requirements to ensure that the legislation is implemented as intended and that the rights of patients are upheld

What is in the Bill:

- Updates to administrative roles to align with new policy intent
- New roles to ensure rights of patients are upheld
- Improvements to review tribunals
- New reporting requirements
- New requirement for regular review of legislation.

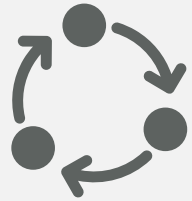
There are a range of **administrative roles** to ensure that processes and decisions are made in accordance with the legislation.

This includes for example, the Director of Mental Health, district inspectors and review tribunals.

New **independent support and advocacy roles** provide greater protections for people under the legislation.

Reporting requirements will ensure the operation of the legislation can be monitored.

This includes that services must report on matters required by the Director of Mental Health. The Director of Mental Health must publish an annual report on the implementation of the legislation.



The Director-General of Health will be required to **review the legislation** within 5 years of commencement and then at 5-yearly intervals.

The responsible Minister will be required to establish an advisory committee within 6 months of commencement to advise on the operation of the Bill.

When would the Bill take effect?

Commencement & implementation

- The Bill has a proposed commencement date of 1 July 2027.
- It is important that there is sufficient time to prepare services in the mental health sector as well as other impacted area such as the courts.
- The Ministry of Health is progressing a programme of work to prepare and support the mental health sector implement new legislation.
- Other changes taking place in the mental health and addiction system will support the Bill. For example, changes are underway through the mental health and addiction infrastructure programme and investment in growing and upskilling our mental health and addiction workforces. There is also a move in some districts to implement advanced care directives and supported decision-making.

Where can I find more information?

The Health Committee has invited public submissions on the Bill. The closing date is **Friday 20 December 2024.**

- You can find out more information about making a submission here: https://www.parliament.nz/en/pb/sc/make-a-submission/document/54SCHEA_SCF_538751B7-FEA5-4DCC-CCE2-08DCE18E31B4/mental-health-bill
- If you have any questions about making a submission, you can contact the Health Committee Secretariat at: health@parliament.govt.nz

- You can read the Bill here: https://legislation.govt.nz/bill/government/2024/0087/latest/whole.html#LMS994889
- You can read the briefing notes developed for the Minister for Mental Health to support the Government to prepare for the introduction and first reading of the Bill here: https://www.health.govt.nz/information-releases/advice-to-minister-for-mental-health-mental-health-bill-briefing-notes-to-support-introduction-and
- You can track the progress of the Bill through the Parliamentary stages here: https://bills.parliament.nz/v/6/538751b7-fea5-4dcc-cce2-08dce18e31b4?Tab=history