



Human Rights Commission
Te Kāhui Tika Tangata

Submission on the Mental Health and Wellbeing Commission Bill

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Submission of the New Zealand Human Rights Commission to the Health Committee on the Mental Health and Wellbeing Commission Bill

Introduction

1. The Human Rights Commission (“the Commission”) welcomes the opportunity to make this brief submission to the Health Committee (“the Committee”) on the Mental Health and Wellbeing Commission Bill (“the Bill”).
2. The Commission welcomes the Bill and its establishment of a Mental Health and Wellbeing Commission (“the MHW Commission”). The establishment of the MHW Commission was a key recommendation of *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*, published in November 2018.
3. *He Ara Oranga* considered that a MHW Commission was needed to:

“...act as a watchdog and provide leadership and oversight of mental health and wellbeing in New Zealand...[and] provide system leadership and act as the institutional mechanism to hold decision-makers and successive governments to account.”¹
4. This objective is restated in the Bill’s Explanatory Note and, by and large, the Bill provides the MHW Commission with a legislative framework that will support this objective.

Observations on the Bill and recommendations

Clause 7 - Designation as an independent Crown entity

5. The Commission welcomes the designation of the MHW Commission’s status as an independent Crown entity (ICE). This adopts the position of *He Ara Oranga* and subsequent recommendations made by the Commission in consultation phases leading to the introduction of the Bill.² The MHW Commission’s designation as an ICE is necessary to provide it with sufficient systemic independence to hold government and other decision-makers to account.

Clause 8 - Knowledge areas of MHWC board members

6. The Commission recommends that knowledge of human rights and, in particular, the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and UN Declaration on the Rights of Indigenous Peoples (UNDRIP), is added to the matters which the Minister of

¹ *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*, p 14

² *Ibid*, Chapter 12, p 202

Health must have regard to when appointing MHW Commission board members under clause 8(2).

7. *He Ara Oranga* reported widespread criticism of the detrimental impact of the mental health system on the human rights of people subject to it.³ This included:

- a. The exercise of compulsory treatment, seclusion and restraint practices undertaken under the Mental Health (Compulsory Assessment and Treatment) Act 1992 as breaching fundamental human rights obligations, including those prescribed under the UNCRPD and UNDRIP;
- b. The role of incumbent legislation in embedding “archaic and risk averse” clinical practice which leads to readily to “coercion and control when other options are available”.
- c. The persistently higher rates of compulsion and seclusion of Māori and Pacific peoples as indicative of unconscious bias and institutional racism.

8. *He Ara Oranga* went on to note that submitters called for:

*“legislative reform that would guarantee human rights, minimise the use of compulsion and seclusion...and require an approach to mental health and addiction that lifts the spirit and restores dignity.”*⁴

9. While reform of other areas of the mental health system is currently underway, including reform of guidelines covering the MH(CAT) legislation, the intrinsic importance of human rights to a well-functioning, humane mental health system cannot be understated.

10. It follows that it is vital that the board of the MHW Commission have knowledge, experience and understanding of New Zealand’s human rights framework and its application to the mental health system.

11. The Commission recommends that clause 8(2) of the Bill is amended to provide that, in appointing board members, the Minister must have regard to the need for members to collectively have knowledge, understanding, and experience of New Zealand’s human rights framework, including the UNCRPD and UNDRIP.

³ *He Ara Oranga*, chapter 2.12, p 61

⁴ *Ibid* at p 62

The role of the MHW Commission in addressing suicide prevention

12. The Bill omits to include suicide prevention as a specified area of focus or function of the MHW Commission. Indeed, suicide prevention is not mentioned anywhere in the Bill's text. This is a surprising omission given that New Zealand's suicide rate, already one of the highest suicide rates in the developed world, is increasing.⁵ Rates for Māori are significantly disproportionate, have almost doubled since 2007/8⁶ and are indicative of pervasive structural discrimination and social inequity.
13. We note that parallel work on suicide prevention is going on in the health sector. The Ministry of Health has recently released the Suicide Prevention Strategy 2019–2029 and the Suicide Prevention Action Plan 2019–2024 that includes the establishment of a Suicide Prevention Office, which is intended to have some oversight functions.
14. Notwithstanding the need to avoid duplication, we consider that the inclusion of a suicide prevention related function in clause 11 would strengthen the MHW Commission's oversight responsibilities in this area and ensure that independent monitoring and reporting of related Government policy and service delivery takes place.
15. **The Commission recommends that clause 11(1)(c) of the Bill is amended to provide that it is a function of the MHW Commission to “assess and report publicly on the effectiveness, efficiency, and adequacy of approaches to mental health and wellbeing (including mental health services, addiction services *and suicide prevention services*).”**

Seeking views/consultation – clause 13 – inclusion of rainbow communities

16. The Commission welcomes clause 13 of the Bill which provides that the MHW Commission must establish mechanisms to ensure effective means of seeking the views of a range of groups, including Māori, Pacific peoples, disabled people and children and young people.
17. However, it is notable and very surprising that clause 13 does not expressly include rainbow communities, despite rainbow communities being described in the Bill's Explanatory Note as a group that experiences poorer mental health and well-being outcomes, alongside Māori, Pacific peoples and disabled people.

⁵ Annual provisional suicide statistics for deaths reported to the Coroner between 1 July 2007 and 30 June 2019; <https://coronialservices.justice.govt.nz/assets/Documents/Publications/Provisional-Figures-August-2019.pdf>

⁶ Ibid, p 3 Table 4

18. The Commission accordingly endorses the recommendation made to the Committee by OUTline in their submission on the Bill (made on behalf of a range of organisations, groups, community leaders, researchers and individuals who work to support the wellbeing and mental health of rainbow people and communities in New Zealand) that clause 13(1) is amended to include rainbow communities within the list of groups prescribed by the clause. In their submission on the Bill, OUTline also observe, among other things, that the Bill's regulatory impact and departmental disclosure statements name rainbow communities as a priority population.
19. In addition it is notable that, as an outcome of the recent review of New Zealand's human rights record by the UN Human Rights Council under its Universal Periodic Review (UPR) process, the New Zealand Government accepted a recommendation to "*continue efforts for the adoption of additional measures to address the disparities registered by the SOG/ISC (Sexual orientation, gender identity and sex characteristics) community with regard to access to services in the entire health system.*"⁷
- 20. The Commission accordingly recommends that clause 13(1) of the Bill is amended to expressly include rainbow communities.**

Clause 13 – strengthen participation rights

21. The Commission also considers that clause 13 can be further strengthened and brought into greater alignment with human rights principles by expanding the consultation obligation of the MHW Commission to one in which they must seek views *and actively involve those groups* in the exercise of their functions.
22. This would reflect to a greater degree the principle of "active involvement" under article 4.3 of the UNCRPD⁸, which provides:

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with

⁷ A/HRC/WG.6/32/L.1, Recommendation 6.101 (Uruguay).

⁸ See also Committee on the Rights of Persons with Disabilities, General Comment No 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, 9 November 2018, CRPD/C/GC/7, paragraphs 15, 28, 48-49 and 61, available <http://docstore.ohchr.org/>

disabilities, including children with disabilities [including] through their representative organizations.

23. The present clause currently provides that “the establishment of mechanisms” is the primary duty of the MHW Commission as regards consultation. Inclusion of an obligation to actively involve the consulted groups and take their views into account ensures direct engagement and participation. Of relevance is the requirement under clause 8 of the Bill that the composition of the Board include persons with personal experience of mental distress and addiction. This provides the MHW Commission with top-down institutional capability to actively involve consumer groups in its work.
24. **The Commission recommends that clause 13(1) of the Bill is amended to provide that, in addition to establishing consultation mechanisms, the MHW Commission must actively involve those persons and take their views into account in the exercise of their functions.**

Inquiries/investigations and information gathering

25. The Commission supports the inclusion of a broad power under clause 12 to publicly report on any matters concerning the mental health and wellbeing of people in New Zealand. We note, however, that *He Ara Oranga* went further and recommended that the MHW Commission have powers to initiate investigations and inquiries at systemic levels.⁹
26. The Commission notes that inquiry/investigation functions are a common feature of ICEs. We have inquiry powers under the Human Rights Act 1993¹⁰, and other ICEs such as the Children’s Commissioner¹¹ and the Privacy Commissioner¹² also hold similar systemic investigative or inquiry functions.
27. Such functions provide ICEs with the ability to independently inquire into or investigate matters of public importance that arise at the systemic and (in some cases) individual levels. While these powers are usually used sparingly, their existence reinforces the mandate of public watchdogs to hold government to account.
28. In any event, broad reporting powers such as those currently provided under clause 12 should be complemented with information gathering powers that enable a properly

⁹ *He Ara Oranga*, p 201

¹⁰ Human Rights Act s 5(2)(h)

¹¹ Children’s Commissioner Act 2003 s 12(1)(a), s 13(1)(a)

¹² Privacy Act 1993, s 13(1)(m)

informed process. The Commission notes that the current information gathering powers set out under clauses 14-16 are limited in their application to the government sector.

29. Consideration should therefore be given to expanding the scope of the Bill's information gathering provisions to enable the MHW Commission to gather information from a broad range of mental health and addition services, health and disability services and relevant social services (such as education, housing and justice sector providers). This would enable the MHW Commission to obtain important practice-level, qualitative information. However, such a power should not cut across Privacy Act rights and we acknowledge the Bill's intention in this respect under clause 15(1)(a).

30. The Commission therefore recommends that the Committee consider amending the Bill to provide the MHW Commission with:

- a. **Systemic inquiry and/or investigation powers, as recommended by *He Ara Oranga*; and**
- b. **An express duty to furnish a s 12 report to the Minister of Health and any other Minister the Commission thinks fit; and**
- c. **Broader information gathering functions that enable the MHW Commission to gather practice-level, qualitative information.**