



Cabinet Social Wellbeing Committee

Minute of Decision

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Initial Amendments to the Mental Health (Compulsory Assessment and Treatment) Act 1992

Portfolio **Health**

On 5 August 2020, the Cabinet Social Wellbeing Committee:

Background

- 1 **noted** that in May 2019, Cabinet agreed to the recommendation in He Ara Oranga to repeal and replace the Mental Health (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act) [CAB-19-MIN-0182];
- 2 **noted** that in June 2019, the Cabinet Social Wellbeing Committee invited the Minister of Health to present a public consultation document in September 2019 and detailed policy recommendations by June 2020 [SWC-19-MIN-0070];
- 3 **noted** that a public consultation document on advice that a longer process is necessary and appropriate to enable a respectful and safe public dialogue has not been provided;

Improving both design and practice under the Mental Health Act

- 4 **noted** that the paper under SWC-20-SUB-0123 presents initial detailed policy recommendations for a multi-pronged approach to repeal and replace the Mental Health Act;
- 5 **noted** that some amendments can be made to the Mental Health Act ahead of the full repeal and replacement of the Act to address the following pressing issues:
 - 5.1 eliminating indefinite treatment orders, a key change that was widely supported by submissions to the Government Inquiry into Mental Health and Addiction;
 - 5.2 minimising the risk of harm to the person or the public when transporting forensic patients who are 'special patients' under the Mental Health Act;
 - 5.3 addressing technical drafting issues that are impacting on the administrative efficiency of the current Act;
 - 5.4 removing the sunset date for technical amendments and audio-visual link amendments made by the COVID-19 Response (Further Management Measures) Legislation Act 2020;

Initial amendments to the Mental Health Act

- 6 **agreed** to make amendments to the Mental Health Act to:
- 6.1 eliminate indefinite treatment orders by requiring the Courts to review an order at the end of each 12-month period for the duration of the compulsory treatment order;
 - 6.2 provide agencies involved in transporting special patients under the Mental Health Act with legal authority to transport those patients, including permitting them to use restraint if it is absolutely necessary and the least restrictive option in the circumstances to prevent harm and protect patient or public safety;
 - 6.3 address a technical issue to improve the administrative efficiency of the current Act by amending section 9(2)(d) to enable the presence of a family member or caregiver by audio or video link when physical presence is not reasonably practicable;
 - 6.4 remove the sunset provisions for amendments made by the COVID-19 Response (Further Management Measures) Bill that:
 - 6.4.1 replaced references to ‘medical practitioner’ and ‘medical examination’ to enable a wider range of suitably qualified practitioners to carry out certain statutory tasks;
 - 6.4.2 enabled duly authorised officers to make the arrangements for an assessment under the general direction of the Director of Area Mental Health Services;
 - 6.4.3 explicitly permit the use of audio visual link technology for examinations, assessments, and reviews by providers, judges, and the Tribunal;
- 7 **authorised** the Minister of Health to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions above;
- 8 **authorised** the Minister of Health to approve any matters of detail that may arise during the drafting of the amendment bill;
- 9 **agreed** to introduce the amendment bill following the 2020 election to give effect to the amendments;

Replacing the Mental Health Act and deferring public consultation

- 10 **agreed** to defer public consultation on repealing and replacing the Mental Health Act until the legislative process for initial amendments is completed;

Financial implications

- 11 s 9(2)(f)(iv) 

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s 9(2)(f)(iv)

Vivien Meek
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Stuart Nash
Hon Jenny Salesa
Hon Damien O'Connor
Hon Tracey Martin
Hon Peeni Henare
Hon Willie Jackson
Hon Aupito William Sio
Hon Poto Williams
Jan Logie, MP

Officials present from:

Office of the Prime Minister
Officials Committee for SWC