

In Confidence

Office of the Minister of Health

Chair, Cabinet Social Wellbeing Committee

Discussion document: Transforming our mental health law

Proposal

- 1 This paper seeks agreement to release a discussion document to support public consultation on repealing and replacing the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act).

Relation to Government Priorities

- 2 The Government agreed to repeal and replace the Mental Health Act as part of its response to *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction (He Ara Oranga)*. It is a critical component of the transformation of New Zealand's approach to mental health and addiction, which supports the Government's overarching priority to improve the wellbeing of New Zealanders and their families.

Background

- 3 The Mental Health Act sets out the circumstances in which people may be subject to compulsory mental health assessment and treatment. It has been widely criticised for not keeping pace with new and emerging approaches to care, and for being out of step with New Zealand's international human rights commitments. As part of the response to *He Ara Oranga*, Cabinet agreed to repeal and replace the Mental Health Act [CAB-19-MIN-0182].
- 4 In August 2020, Cabinet received an overview of a multi-pronged approach to completing this work programme involving:
 - 4.1 improvements to the current application of the Mental Health Act and provider practice
 - 4.2 initial amendments to the current Mental Health Act
 - 4.3 policy work to fully repeal and replace the Act, including public consultation at a later stage.
- 5 At this time Cabinet agreed to make initial amendments to the Mental Health Act ahead of full repeal and replacement to address pressing issues, and to defer public consultation until the legislative process for the amendments is completed [CAB-20-MIN-0376].
- 6 In September 2020, as part of the focus on improvements to the current application of the Mental Health Act, the Ministry of Health published revised guidelines to the Mental Health Act (the Guidelines) emphasising the

application of Te Tiriti o Waitangi, human rights, and supported decision-making for people under the Mental Health Act.

- 7 In March 2021, Cabinet approved the Mental Health (Compulsory Assessment and Treatment) Amendment Bill (the Amendment Bill) for introduction [CAB-21-MIN-0065]. The Amendment Bill is currently being considered by the Health Committee. Public submissions closed on 19 May 2021, and the Committee is due to report back to the House of Representatives by 6 October 2021.
- 8 With these significant steps accomplished, it is time to focus our efforts on completing the full repeal and replacement of the Mental Health Act as recommended by *He Ara Oranga*.

Commencing public consultation

- 9 Previous public feedback, including through *He Ara Oranga*, has concentrated on the issues with the current legislation but has not provided the level of detail required to narrow policy options for what new mental health legislation in New Zealand should look like. It is essential that the development of policy for new legislation be done in collaboration with stakeholders and communities.
- 10 A forward-looking public discussion is needed to understand how New Zealand envisions the future of mental health legislation. Officials have advised that submissions received by the Health Committee on the Amendment Bill clearly indicate that people are ready to engage in this discussion now.
- 11 Cabinet previously agreed to defer public consultation until the legislative process for the Amendment Bill is complete to avoid confusion for the public [CAB-20-MIN-0376]. However, recognising the readiness of people to have this discussion, I recommend commencing public consultation as soon as possible beginning with the release of a discussion document.
- 12 The public submission process for the Amendment Bill has completed, reducing concerns that people will confuse the two processes.

Topics presented for public consultation

- 13 I have provided a discussion document, *Transforming our mental health law*, with this paper which seeks feedback on key topics that must be addressed in the development of new mental health legislation. I recommend this document be approved for public release as soon as practicable following Cabinet consideration.
- 14 The key topics covered in the discussion document include:
 - 14.1 embedding Te Tiriti o Waitangi and addressing Māori cultural needs

- 14.2 defining the purpose of mental health legislation, including adopting a human rights approach and seeking views on whether compulsory mental health treatment should ever be allowed
 - 14.3 defining the circumstances and criteria for when compulsory mental health treatment, if allowed, might be appropriate
 - 14.4 ensuring people are able to use appropriate tools to support them to make decisions about their care and treatment
 - 14.5 the use of seclusion, restraint, or other restrictive practices
 - 14.6 addressing the needs of specific populations such as people from different cultural backgrounds, family and whānau, children and youth, disabled people, and people from the justice system
 - 14.7 how to ensure people's rights are protected and monitored.
- 15 The feedback received on these topics will inform and support the development of policy recommendations for the new legislation.

Process for public consultation

- 16 We know there is a range of strongly held views regarding the Mental Health Act and what should be included in new legislation. Some stakeholders assert that legislation should never permit compulsory assessment or treatment, while other stakeholders hold the view that new legislation should allow for more restrictive care than currently permitted.
- 17 We also know there is wide divergence between people with lived experience of compulsory treatment compared to their whānau. As well, the unique perspective of Māori, who are disproportionately affected by compulsory treatment, differs from non-Māori.
- 18 The discussion document will be open for submissions for a 12-week period. The Ministry of Health will also host face-to-face meetings, hui, and fono over the same 12-week period to provide opportunities for individuals to give feedback in-person.
- 19 To enable access and engagement by the diverse group of stakeholders and individuals interested in this conversation, the document will be made available in an easy read format, Te Reo Māori, and other accessible formats. The attached discussion document will also be the basis for a range of easy to understand summary materials to support different styles of engagement.
- 20 I am confident the public consultation process will enable all of these voices and views to be heard and considered.

Next Steps

- 21 Following the public consultation process, the Ministry of Health will analyse all submissions and feedback received to inform the development of policy

recommendations for new mental health legislation. Further targeted stakeholder engagement will be undertaken to finalise the recommendations.

- 22 I will present the recommendations for new legislation to Cabinet as soon as possible. I expect this to be by the end of 2022.

Financial Implications

- 23 The cost of public consultation will be met within the Ministry of Health baseline funding.

Legislative Implications

- 24 This paper does not contain legislative proposals. Cabinet has previously agreed to repeal and replace the Mental Health Act [CAB-19-MIN-0182 refers]. A Bill will be required to implement proposals in the future. s 9(2)(ba)(ii)

Impact Analysis

- 25 The Ministry has consulted with the regulatory impact quality team at the Treasury who agree a Regulatory Impact Statement (RIS) is not required for this discussion document because it does not narrow policy options.

Population Implications

- 26 There are no direct population impacts from the proposals in this paper, however, a range of health inequities exist and are perpetuated under the current Mental Health Act. This is particularly evident among Māori and Pacific peoples, who are much more likely than the general population to experience detention, compulsory treatment and seclusion under the Mental Health Act.
- 27 The discussion document will be made available in a range of formats as described in paragraph 19, and opportunities to provide feedback will be available through face-to-face meetings, hui, and fono. This will ensure the public consultation process is accessible by the people who will be most affected by future legislation.

Human Rights

- 28 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 29 The following government agencies have been consulted in the development of this paper and the discussion document: the Ministries of Education, Justice, Social Development, Primary Industries, Women, Pacific Peoples, and Business, Innovation and Employment; the Department of Corrections, the New Zealand Police, Oranga Tamariki—Ministry for Children, Te Puni Kōkiri, the Office for Disability Issues, the Accident Compensation

Corporation, the Social Wellbeing Agency, the Public Service Commission, the Department of the Prime Minister and Cabinet, and the Treasury.

- 30 The following Crown entities have been consulted in development of the discussion paper: the Human Rights Commission, the Mental Health and Wellbeing Commission, the Office of the Ombudsman, the Health and Disability Commission, the Health Promotion Agency and the Health Quality and Safety Commission.

Communications

- 31 I will issue a press release announcing the commencement of public consultation when the discussion document is published. Accessible formats of the discussion document, as well as other supporting materials to enable wide engagement will also be made available upon publication.

Proactive Release

- 32 I will proactively release this Cabinet paper at the time the discussion document is published to ensure the proactive release does not pre-empt the publication date.

Recommendations

The Minister of Health recommends that the Committee:

- 1 approve public release of the discussion document *Transforming our mental health law*;
- 2 direct the Ministry of Health to commence public consultation on repealing and replacing the Mental Health Act as soon as the discussion document is published;
- 3 authorise the Minister of Health to approve changes arising from formal editing and formatting prior to public release of the discussion document;
- 4 note the discussion document will be made available in an easy read format, Te Reo Māori, and other accessible formats;
- 5 note the discussion document will be open for submissions for 12 weeks;
- 6 note the public consultation process will include public meetings, hui, and fono hosted by the Ministry of Health.

Authorised for lodgement

Hon Andrew Little

Minister of Health