

29 April 2022

s 9(2)(a)

By email s 9(2)(a)  
Ref H202204537

Tēnā koe s 9(2)(a)

**Response to your request for official information**

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health (the Ministry) on 24 March 2022 for information relating to mental health.

On 4 April 2022, you were contacted by the Ministry to advise that further clarification was required in order to provide a response to your request. Specifically, the Ministry sought additional information regarding the 'Mental Health Report' referenced in your request. On 8 April 2022, you revised your request and clarified that you refer to *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction (He Ara Oranga)*. I will respond to each part of your request in turn:

*The report was He Ara Oranga. In Chapter 11 on page 105 Recommendations 34 and 35 it mentions the Mental Health (Compulsory Assessment and Treatment) Act 1992. This Act seems to have been the one that changed informed consent to simply consent. Is this so, and what was the reason for this?*

It is not correct that the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) changed informed consent to simple consent. Section 67 of the Mental Health Act entitles every patient to receive an explanation of the expected effects of a treatment offered to the patient, including the expected benefits and the likely side effects, before the treatment is commenced.

However, the Mental Health Act does allow treatment without consent during the initial assessment period, the first month of a Compulsory Treatment Order, but thereafter only if it is deemed to be in the interests of the patient by a second health professional. The second health professional must be a psychiatrist who has been appointed to assess patient interests by the Mental Health Review Tribunal under section 59 of the Mental Health Act.

Electroconvulsive therapy (ECT) and brain surgery have special conditions contained in sections 60 and 61 of the Mental Health Act, but brain surgery is the only treatment requiring the consent of the patient that cannot be overridden by a second opinion of a lawfully appointed psychiatrist. Brain surgery has not taken place in New Zealand since the current Mental Health Act came into force.

*He Ara Oranga* recognised that the Mental Health Act has not kept pace with the shift towards a recovery and wellbeing approach to care. For this reason, the Government accepted the recommendation in *He Ara Oranga* to repeal and replace the Mental Health Act with fit-for-purpose legislation that reflects a human rights-based approach.

The Ministry recently undertook a public consultation process to hear New Zealanders' views on what new mental health legislation in New Zealand could look like. Some of the issues the public discussion document sought input on was whether compulsory mental health treatment should be allowed, as well as decision-making capacity and supported decision-making.

The Ministry will use the public's feedback to develop policy recommendations to the Government by the end of 2022. The Government's policy decisions will then shape new mental health legislation. Drafting new laws is a long process, and there will be more opportunities for the public to have their say. You can keep up-to-date with the work on the Mental Health Act here: [www.health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/pepealing-and-replacing-mental-health-act](http://www.health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/pepealing-and-replacing-mental-health-act).

*Does the Ministry of Health keep records of how many compulsory patients are not given informed consent?*

Since 2004, the Ministry has published data about ECT given with and without consent. The Ministry does not hold information relating to the other compulsory treatments that you mention in your request.

Data on ECT given with and without consent is available publicly on the Ministry's website in each year's annual report from the Office of the Director of Mental Health and Addiction Services: [www.health.govt.nz/about-ministry/corporate-publications/mental-health-annual-reports](http://www.health.govt.nz/about-ministry/corporate-publications/mental-health-annual-reports).

*What process protects these patient's rights to be informed of the serious metabolic and other adverse side effects of the drugs they are put on?*

Section 67 of the Mental Health Act provides the right to be informed about treatment, and section 75 of the Mental Health Act provides a complaint process where anyone can complain to a District Inspector about a breach or an omission of section 67. District Inspectors are lawyers appointed by the Minister of Health to watch out for the rights of patients subject to the Mental Health Act.

You can find the contact details of District Inspectors here: [www.health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/mental-health-compulsory-assessment-and-treatment-act-1992/mental-health-district-inspectors/mental-health-district-inspectors-list](http://www.health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/mental-health-compulsory-assessment-and-treatment-act-1992/mental-health-district-inspectors/mental-health-district-inspectors-list).

If, after investigating a complaint, a District Inspector finds a breach of rights under the Mental Health Act then the mental health service must put that matter right.

*Is the Ministry of Health aware of the number of psychiatric outpatients (not under compulsory care) who have been put on these drugs without informed consent.*

*And does the MOH have statistics on how many of these patients do not receive any other psychiatric services eg., Social workers, psychology.?*

These parts of your request are refused under section 18(e) of the Act as the information is not held by the Ministry.

*Are there Cabinet or Treasury documents or MOH policy documents recommending these policies? I suspect that in beginning a 'recovery model' in mental health the result was a drugs only approach for some. Please release all of the relevant documents under the OI Act?*

The Ministry has interpreted the scope of this part of your request to do with policies relating to the treatment of people with a mental illness. Based on the Ministry's interpretation of this part of your request, the information you have requested is refused under section 18(f) of the Act as the information request cannot be made available without substantial collation or research. I have considered whether charging or extending the time to compile the information would enable us to respond. However, as each document would have to be individually reviewed, I do not believe it is in the public interest to do so. The Ministry remains willing to engage with you on a revised scope for your request.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry of Health website at: [www.health.govt.nz/about-ministry/information-releases](http://www.health.govt.nz/about-ministry/information-releases).

Nāku noa, nā



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