

Transforming our Mental Health Law: Summary of key themes from public consultation

To find out what New Zealanders wanted from new mental health legislation, the Ministry of Health opened public consultation on Transforming Our Mental Health Law: A Public Discussion Document.

Although there was a range of diverse feedback gathered through the consultation, we heard clearly that New Zealanders are ready to see major changes and different approaches in new mental health legislation.

Background: Approach to consultation

Consultation ran for three months, opening on 22 October 2021 and closing on 28 January 2022. There were two ways people could submit feedback – through written submissions and by joining an online consultation hui.

The Ministry of Health received 317 written submissions, and feedback was gathered from over 500 people who attended over 60 online information sessions and consultation hui.

We engaged widely to ensure feedback was representative of key groups, including people with lived experience and their family and whānau, Māori, Pacific, Asian and ethnic communities, the mental health sector including non-government organisations (NGOs) and clinicians as well as the general public.

All the consultation feedback was analysed by an independent research provider, Kaitiaki Research and Evaluation, and summarised into a submissions analysis document. This identified the high-level views and key themes of the public consultation feedback and will be used to guide the development of policy proposals for new legislation.

Overarching views and general themes

The views received through the public consultation were diverse and there was not always agreement across all areas. There were differing views across key areas such as whether compulsory treatment should be permitted, and whether restrictive practices have a place in new legislation. However, within these views there was consistency.

Many submissions and comments reiterated why the repeal and replacement of the Mental Health Act is important, covering wider system and operational issues. While these insights go beyond the scope of legislative reform, they will inform ongoing work to transform the Mental Health and Addiction system more broadly.

Across all stakeholders there is the desire for the Mental Health Act (the Act) to be more tāngata whaiora and whānau focused. Other general themes included that Te Tiriti o Waitangi should be the foundation for new mental health legislation, that rights should be upheld in alignment to international conventions and that the Act is being misused.

Overarching themes around compulsory treatment

Under the Act, if a person is assessed as having a mental disorder, they can be subject to compulsory assessment or treatment where they will have to receive treatment. Many stakeholders shared a desire for removing compulsory treatment from mental health legislation. However, removing compulsory treatment was seen by most people as an aspirational goal as the majority did not believe it would be possible due to the current design and focus of mental health services. Views shared at the consultation hui showed that the majority wanted mental health legislation to include the limited use of compulsory treatment, to be used only as a last resort.

Views of stakeholders fell into two distinct categories:

- **Those in favour of no compulsory treatment or significant reductions in compulsory treatment** – these stakeholders considered that any compulsion is incompatible within a human rights framework; often results in re-traumatising people who are already in distress; does not align with a te ao Māori worldview, and is counter to Pacific worldviews.
- **Those cautious about or opposed to completely removing compulsory treatment** – these stakeholders were concerned that removing compulsion could leave some people unwell, vulnerable, homeless or unable to care for themselves; risk inhumanely treating an individual; and possibly lead to increased suicidality and death.

Despite the two distinct categories, there was agreement across stakeholders that:

- it is important that the person receiving compulsory treatment is not adversely affected
- legislation should enable supported decision-making, particularly advance directives in place of substituted decision-making, as a means of empowering tāngata whaiora and ensuring their rights and wishes are followed
- some degree of compulsory treatment might be needed when someone has no previous mental health diagnosis and suddenly experiences an acute mental health crisis.

Themes around what legislation would look like if compulsory treatment was allowed or prevented

Stakeholders provided feedback on what it would look like if compulsory treatment was allowed or prevented in legislation:

- **If legislation allowed compulsory treatment** – the majority of responses from the consultation sessions considered that if compulsion was allowed, it should be only as a last resort. Stakeholders, including tāngata whaiora and whānau, identified that the criteria for compulsory treatment under mental health legislation should reflect extreme and serious circumstances and should be used only where no other option exists.
- **If legislation prevented compulsory treatment, we asked how to avoid coercion** – responses were varied, however, common themes included adhering to a human rights framework, providing adequate and appropriate support (including making community-based support and treatment options available), enabling whānau to have a central role in supported decision-making, and explicitly including advance directives in legislation.

Themes around embedding Te Tiriti o Waitangi

The importance of embedding Te Tiriti o Waitangi in mental health legislation was a common theme across stakeholders. In particular, stakeholders wanted the articles and intent of Te Tiriti to be embedded in all aspects of new mental health legislation.

Māori stakeholders emphasised the integral relationship between Te Tiriti o Waitangi, kāwanatanga, tino rangatiratanga and ōritetanga and acknowledging the person's connection with their wairua, values and beliefs from a Māori worldview.

Stakeholders recognised Māori are over-represented in the mental health system. They considered that mental health legislation needs to explicitly acknowledge the inequities, racial disparities and intergenerational trauma experienced by Māori to address this inequity.

Themes around capacity and decision-making

There were mixed views about the need for a test of decision-making capacity as a criteria for compulsory treatment. However, the majority of participants supported including a capacity test in new legislation.

Those in support of a capacity test suggested that definitions of decision-making capacity should be aligned across all legislation, that capacity should be reviewed at regular intervals, and that guidelines would be required to guide clinicians to make decisions in cases of fluctuating capacity.

Those who were less supportive raised concerns about risk, stating for example, that a person may be able to meet a test of decision-making capacity and also be a risk to themselves or others. Another concern was that because the Act can only be used in acute situations, it would be rare for capacity to be present at these times. Additionally, a decision-making capacity test could result in superficial and administratively burdensome processes centred on avoiding risk.

Themes around supported decision-making

There was strong agreement for including supported decision-making mechanisms in legislation, and in particular advance directives.

Submitters considered there were often situations where family and whānau had been excluded from the care of tāngata whaiora. There was support for family and whānau to be more engaged in key processes, while respecting the right of tāngata whaiora to reject such opportunities. This would mean family, whānau, and significant others are included in decision-making, are communicated with appropriately, and have access to the information needed to make informed decisions.

Themes around restrictive practices

Stakeholders considered that the use of restrictive practices would greatly reduce if the focus within the wider mental health and addiction system moved from crisis intervention to community-based comprehensive and preventative care.

People had divergent views on the use of restrictive practices and their role, if any, in future mental health legislation. For example, submissions from lived experience, Māori health sector, and family and whānau shared a view that using restrictive practices was almost always unnecessary in inpatient settings. In contrast, mental health sector consultation participants considered that restraint and seclusion are necessary in some situations, and eliminating these practices would prevent clinicians from keeping the individual, other tāngata whaiora and staff safe.

If legislation were to permit restrictive practices, there was general agreement that there needs to be clear definitions of terms, safeguards to clearly prescribe limits on its use, and monitoring requirements. Reducing the use of seclusion and other restrictive practices outside of legislation (eg, through the Health Quality and Safety Commission's Zero Seclusion programme) should also continue.

Themes around monitoring and protecting people's rights

Feedback was sought on a range of areas that need to be considered in new legislation to protect and monitor people's rights. Participants with lived experience felt that the Act has resulted in the continued erosion of their rights. Some consultation hui participants stated that the environment of current Mental Health Act courts does not encourage a sense of wellbeing, especially for tāngata whaiora.

Key themes raised by stakeholders included:

- Making sure tāngata whaiora have access to culturally-appropriate, independent peer support and advocacy services; including whānau in decisions relating to treatment and care; and greater accountability for cultural competency among those working with Māori.
- When approving the use of compulsory treatment, there was strong support for a process that relied on a human rights framework and appropriately reflected te ao Māori worldviews.
- Tāngata whaiora need to be supported in their right to disagree and appeal clinical decisions and must have the right to accessible legal advice, advocacy, support and representation. There was also emphasis that people should be able to choose to refuse treatment, revoke consent and make their own choices.

Next steps

The feedback received from the public consultation will guide the development of policy proposals for new legislation, which we will present to the Government for consideration. Ultimately Cabinet will still make the final decisions about new Mental Health Legislation.

For more information, visit the Manatū Hauora Ministry of Health [website](#).