Briefing

Progressing the Mental Health Bill

Date due to MO:	19 December 2023	**Action required by:**	12 January 2024
Security level:	IN CONFIDENCE	**Health Report number:**	H2023033419
To:	Hon Matt Doocey, Minister for Mental Health		
Copy to:	Hon Dr Shane Reti, Minister of Health		
Consulted:	Health New Zealand: ☐ Māori Health Authority: ☐		

Contact for telephone discussion

Name	Position	Telephone
Kiri Richards	Acting Associate Deputy Director-General, Mental Health and Addiction, Clinical, Community and Mental Health	s 9(2)(a)
Robyn Shearer	Deputy Director-General, Clinical, Community and Mental Health	s 9(2)(a)

Minister's office to complete:

☐ Approved	☐ Decline	☐ Noted
☐ Needs change	☐ Seen	☐ Overtaken by events
☐ See Minister's Notes	☐ Withdrawn	

Comment:

Progressing the Mental Health Bill

Security level:	IN CONFIDENCE	**Date:**	19 December 2023
To:	Hon Matt Doocey, Minister for Mental Health		

Purpose of report

1. This briefing provides advice on progressing the Mental Health Bill (the Bill), which once passed will replace the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act).

2. This report discloses all relevant information and implications.

Summary

3. A Mental Health Bill, which once passed will repeal and replace the Mental Health Act, is currently being drafted. The proposals in the Bill have been informed by public consultation, feedback from experts, and engagement with key government agencies and wider public sector organisations.

4. The Mental Health Act sets out the rules for when the government may intervene in a person's life to provide mental health assessment and treatment without their consent. *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction (He Ara Oranga)* recognised that the Mental Health Act has not kept pace with the shift towards a recovery and wellbeing approach and has never been comprehensively reviewed.

5. In line with the recommendations in *He Ara Oranga, t*he intent of the new legislation is to shift the legislative framework to a more rights-based and recovery approach. This includes provisions setting out a new purpose and principles, supported decision-making approaches, greater recognition of family and whānau, more balanced use of restrictive practices and more comprehensive approaches to care, to better support the needs of tāngata whaiora[1] and the safety and wellbeing of all New Zealanders.

6. Alongside the development of the Mental Health Bill, we are progressing work on implementation and managing any potential risks associated with the new legislation. This includes ensuring the mental health sector is given time to plan and prepare for changes.

7. There continues to be a high level of public interest in a Mental Health Bill and stakeholders would like to see the work progress at a faster pace. There is potential for a Bill to be introduced to Parliament in s 9(2)(f)(iv) , subject to your and Cabinet's agreement, s 9(2)(f)(iv)

[1] Tāngata whaiora means 'people with wellness'. It is inclusive of all people who experience mental distress or substance harm who have or are seeking wellness or recovery. It recognises that even if a person is receiving compulsory care there can still be wellness within them. People with lived experience generally prefer this term over 'patient', 'service user' and 'consumer'.

s 9(2)(f)(iv) . We are working closely with the Parliamentary Counsel Office to finalise a draft Bill to meet this timeframe.

8. Should you agree to progress the Bill, the key next step will be for you to bid for a place on the Government legislation programme for 2024, the process for which is likely to happen early in the new year. Officials can support you with this process.

Recommendations

We recommend you:

a) **Note** that drafting of a Mental Health Bill is wel y and we are working towards Cabinet approval for introduction in s 9(2)(f)(iv), which will enable a Bill to be enacted s 9(2)(f)(iv)

b) **Note** that the Mental Health Bill will shift the legislation towards a more human rights-based and recovery approach, and put people at the centre of their own care

c) **Agree** that officials continue to progress the Mental Health Bill with the intention that you would seek Cabinet Legislation Committee (LEG) approval in s 9(2)(f)(iv) **Yes/No**

d) **Note** that in order to seek LEG approval in s 9(2)(f)(iv) you would receive a near-final version of the Bill along with a Ca per for comment and Ministerial consultation in s 9(2)(f)(iv)

e) **Indicate** if you would like to meet with officials to discuss the Bill and timing for introduction. **Yes/No**

Robyn Shearer
Deputy Director-General,
Clinical, Community and Mental Health | Te Pou Whakakaha
Date: 15 December 2023

Hon Matt Doocey
Minister for Mental Health
Date:

Progressing the Mental Health Bill

The development of the Mental Health Bill is underway

1. The Mental Health Act sets out the specific circumstances when people may be subject to compulsory assessment and treatment. It also sets out the processes for people found by the courts to be unfit to stand trial or acquitted on account of insanity (as defined in the Criminal Procedure (Mentally Impaired Persons) Act 2003) to receive mental health treatment in a secure environment.

2. Compulsory mental health care places significant limits on human rights, such as the rights to liberty and to refuse medical treatment. Compulsion can also significantly affect the autonomy, personal dignity, and mana of tāngata whaiora and their family and whānau. Most people in New Zealand who access specialist mental health and addiction services are not subject to the Mental Health Act. In 2021/22, 6.4% of specialist mental health and addiction service users were subject to the Act.

3. As part of the response to *He Ara Oranga*, we have been developing new mental health legislation that will reflect a human rights-based approach, promote supported decision-making, align with the recovery and wellbeing model, and provide measures to minimise compulsory or coercive treatment.

4. In December 2022 and July 2023, Cabinet agreed to policy proposals for new legislation [SWC-22-MIN0234; SWC-23-MIN-0096]. Cabinet materials and associated papers were proactively released on the Ministry of Health website in August 2023, and we can provide copies of this material, if required. Drafting of the Mental Health Bill is underway, and it held a category 5 priority on the 2023 Legislation Programme (under this category, 'instructions to be provided to the Parliamentary Counsel Office before the 2023 general election').

The policy proposals in the Bill have been informed by public consultation and expert input

5. We have taken a phased approach to the development of new mental health legislation, to ensure immediate issues could be addressed within current settings while the longer-term work on new legislation took place. Immediate, short-term work included publishing new guidelines to improve service user experiences and making initial amendments to the Mental Health Act in 2021, which included the elimination of indefinite compulsory treatment orders.

6. The full repeal and replacement work has been informed by key issues outlined in *He Ara Oranga*, feedback received through public consultation, international and domestic evidence and research, and discussions with an Expert Advisory Group and key government agencies.

    a. **Public consultation:** We received over 300 written submissions and feedback from over 500 people who attended public consultation hui from October 2021 to January 2022. Feedback was received from key groups, including Māori, people with lived experience and their whānau, Pacific, Asian and ethnic communities, young people, tāngata whaiora with co-existing disabilities, the mental health sector (including NGOs), clinicians, and the general public. While views were diverse and

there was no consensus in many key areas, it was clear that New Zealanders are ready to see major changes to mental health legislation.

b. **Expert Advisory Group:** We established a group of experts to help test and refine draft policy proposals. Members brought diverse expertise and perspectives covering Māori, lived experience of the current Mental Health Act, people who had supported a family/whānau member under the legislation, clinicians, and legal and academic experts. The group met regularly from May 2022 to March 2023 to assist us to balance the diverse views received through public consultation.

c. **Engagement with key government agencies and wider public sector organisations:** We have worked closely with agencies whose populations of interest, systems or legislation may be affected by new mental health legislation, such as the Māori Health Authority, Health New Zealand, Ministry of Justice, Corrections, Police, Ministry of Social Development, Oranga Tamariki and Whaikaha. We have also consulted with public sector organisations who may interact with mental health legislation, such as the Mental Health and Wellbeing Commission, and the offices of the Ombudsman and Health and Disability Commissioner.

The Mental Health Bill shifts the legislative framework towards a more rights-based and recovery approach to compulsory mental health care

7. New mental health legislation is intended to better meet the needs of people subject to it and place them at the centre of their own mental health care. It will recognise decision-making capacity and support people to make their own decisions and choices, enabling greater self-determination and autonomy in their lives. The new legislation will also recognise the key role that a strong support network of family, whānau and trusted people has in supporting the recovery journey.

8. Key aspects of the Mental Health Bill include:

a. **Purposes and principles** that are intended to underpin how the law will work in practice by expressing the expectations for services and support that should be provided to people under the legislation and their family and whānau. This includes s 9(2)(f)(iv) [redacted]

b. **Legal criteria and statutory processes** that are intended to ensure the legislation is only used when a person has a serious need and would benefit from its use, serious adverse effects would otherwise occur, and the person does not have decision-making capacity relating to their mental health care. Clearer statutory processes when a person is subject to the legislation are intended to simplify how it is used, as well as improve the accessibility and clarity of the law.

c. **Supported decision-making approaches** that are intended to support people to make their own decisions about their care, support greater individual autonomy and enhance the involvement of family, whānau and other support people. It is intended that these approaches sit alongside requirements to put people at the centre of their care planning, including through more holistic and comprehensive mental health care, and ensure more frequent reviews of a person's care plan and legal status.

d. **A balanced approach to seclusion, restraint, and other restrictive practices** that is intended to support more limited use of these practices, including more detailed and public reporting when used, to support the goal of eventually eliminating seclusion and reducing restraint.

e. **Rights, complaint resolution, review and appeal provisions** that are intended to improve the experience of people subject to the legislation and the procedures for addressing complaints, and make it easier and more accessible for people to review and challenge statutory decisions.

f. **Statutory roles, monitoring and reporting provisions** that are intended to retain much of what exists now, with updates to reflect a more modern understanding and to ensure they work as intended with other areas of the new legislation.

9. More information on the key aspects of the Mental Health Bill is attached at Appendix A.

Implementation work is progressing alongside the development of the Bill

10. s 9(2)(h) [redacted], however we know that successful implementation of new legislation will require collaboration between the health and disability sectors, key government agencies and communities. We already have a programme of work underway to prepare the mental health sector to implement new legislation, which includes partnering with Health New Zealand hospital and specialist services.

11. The implementation programme will progress in parallel to the Bill to maximise the time available. New legislation will require new ways of working, which will have implications for workforce capability and capacity, including new roles, time, training, guidelines, and closer reporting and monitoring. There are funding implications associated with implementing new legislation, and we will be working with Health New Zealand to refine cost estimates, with the intention that funding implications be managed within agreed multi-year health budgets.

12. There are already examples of best practice taking place in the sector that support the direction of new legislation. We are working to identify where changes and realignment to practices and processes will be needed to support the direction of new legislation. For example, there may be opportunities to pilot supported decision-making approaches and to start targeted workforce training. This will also include consideration of how changes can be phased to support the readiness of the sector.

13. New mental health legislation is one part of the broad programme of work underway to transform New Zealand's mental health and addiction system. While legislation is a key mechanism for shifting behaviours and improving outcomes, effective implementation is reliant on wider system, service, cultural and practice changes, updated infrastructure, workforce capacity and capability, and societal attitudes and discourse about risk and mental health.

14. A high-level implementation plan is attached at Appendix B.

There is a high level of public interest in seeing a Mental Health Bill introduced

15. Public and stakeholder interest in new mental health legislation remains high, and many are expecting it to progress quickly. We have seen this come through in submissions from the public consultation, as well as to select committee on the amendments to the Mental Health Act in 2021. We have had high levels of engagement and have seen the readiness of stakeholders and the public to see new legislation in place.

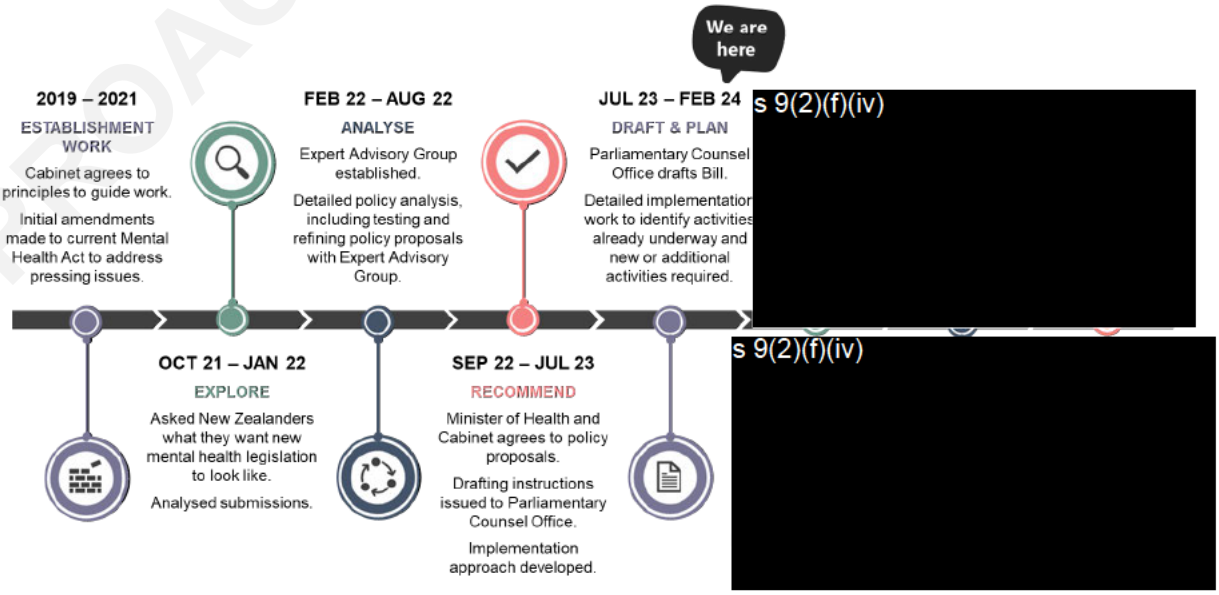
16. The current Act is also the subject of ongoing legal challenge in the courts by Ms Sarah Gordon, a mental health services consumer, and Mr Giles Newton-Howes, a psychiatrist. They have sought a more human rights-consistent interpretation of the Mental Health Act while it remains in force pending the repeal and replacement of the Act. The applicants were unsuccessful in the High Court, however they have appealed this decision, so it would be beneficial to continue to progress new legislation.

17. Timing for progressing the Mental Health Bill will be dependent on Government priorities, including priority on the legislation programme and Parliamentary Counsel Office resourcing. We have been working towards introduction in s 9(2)(f)(iv) and passage through all Parliamentary stages by s 9(2)(f)(iv).

Your upcoming decisions to progress the Mental Health Bill

18. Subject to your agreement to progress the Mental Health Bill, you will need to make a bid for a place on the Government legislation programme for 2024, and we anticipate that process will take place early next year. After priority is sought and drafting of the Bill is complete, the next step will be for you to seek approval from the Cabinet Legislation Committee (LEG) and Cabinet for the Bill to be introduced. Seeking approval for introduction s 9(2)(f)(iv) .

19. After introduction, the Bill will proceed through the normal Parliamentary stages, including select committee consideration. The timeline below provides an overview of the work completed and work ahead:



20. Subject to your agreement, the indicative key dates and decision points for progressing the Mental Health Bill are:

21. s 9(2)(f)(iv) [redacted]

We are managing risks associated with the Mental Health Bill

22. The work to develop new legislation is complex and we are managing a range of risks and issues, including:

a. **Timing:** as noted above, there is high public interest in new legislation being enacted. Stakeholders would like to see the work progress quickly, and many would like more certainty on timing. s 9(2)(f)(iv) [redacted]. We can also continue to keep stakeholders updated on key decisions and dates, as appropriate, and make them aware of the opportunity to provide submissions at select committee.

b. **Stakeholder views:** although there is consensus among stakeholders that new legislation is needed, there are a wide range of strongly held and competing views as to what it should look like. The Bill is intended to integrate complex ethical, legal and policy issues with the diverse range of views received through consultation and engagement with stakeholders.

c. **Policy intent:** there is a risk that the legislation will not be implemented in line with its policy intent. To manage this risk, secondary legislation, guidelines and training material will sit alongside the primary legislation to help ensure the policy intent is achieved.

d. **Inequitable outcomes:** Māori are disproportionately subject to compulsory mental health treatment. In 2020/21, Māori represented around 35% of those subject to compulsory assessment and around 38% of those subject to a compulsory treatment order. The Bill is intended to help improve outcomes for Māori, for example, through supported decision-making processes (e.g., whānau and cultural perspectives) and enabling te ao Māori approaches to care, support and treatment. Greater supported decision-making is also intended to better assist disabled people

and children and young people to make and participate in decisions being made about them.

e. **Restrictive practices:** the continued but limited use of seclusion, restraint and other restrictive practices in legislation will remain an area of contention among stakeholders. In the longer term, reducing the use of these practices and eliminating seclusion requires focused and sustained change across non-legislative measures such as practice, culture, workforce and physical environments. Work is underway to provide a clearer pathway and timeline for achieving this. A key input into this work is the findings from Ki Te Whaiao, a joint project we have undertaken with the Māori Health Authority, which investigated kaupapa Māori approaches to compulsory care with a particular focus on seclusion and restraint.

f. **Implementation**: the mental health sector is likely to have some concerns relating to workforce preparedness, resourcing and lead-in time to support them to make changes. This is why, as outlined above, implementation work is already underway and taking place alongside development of the Bill to give the sector as much time as possible to plan, prepare and implement changes.

Next steps

23. Subject to your agreement, we will continue to work with the Parliamentary Counsel Office to finalise the Mental Health Bill for LEG consideration in s 9(2)(f)(iv).

24. Officials can be available to meet with you should you wish to discuss the advice, draft Bill and timing for introduction.

ENDS.

Minister's Notes

Appendix A: Key aspects of Bill

The next two pages provide an overview of the policy proposals in the Bill. There are new aspects in the Bill such as purpose and principles and supported decision-making approaches. Other areas of the Bill make changes to the current legislative provisions by modernising and aligning them with the new policy direction to support a more rights-based and recovery approach to compulsory mental health care. For each aspect of the Bill we have set out what happens under the current Act, the change under the Bill and the rationale for that change.

01 Purpose & principles

WHAT HAPPENS NOW

MENTAL HEALTH ACT

There is no purpose statement, only a long title that sets out its general purpose, and there are no principles.

The long title states the general purpose of redefining the circumstances and conditions under which people may be subject to compulsory psychiatric assessment and treatment, defining and providing better protection for their rights and generally reforming and consolidating the law relating to assessment and treatment of people suffering from mental disorder.

WHAT IS CHANGING

MENTAL HEALTH BILL

A purpose statement will set out that s 9(2)(f)(iv) s 9(2)(f)(iv) [redacted]

Compulsory care principles will set out expectations that decision-makers must be guided by, including that compulsory care should be used only for therapeutic purpose, be least restrictive in its application and be supportive and responsive.

RATIONALE FOR CHANGE

RATIONALE

The current Act is out of date and does not align with international and domestic human rights obligations, as well as being out of step with a rights-based and recovery approach to mental health care.

Changes are intended to:

- build upon the health sector principles in the Pae Ora Act 2022
- help shift the application of the legislation towards rights-based and recovery approaches to compulsory mental health care
- support the purpose/objectives of new legislation
- help to affirm the rights of the person and their family and whānau
- place the person at the centre of their own care and ensure care is provided in a way that reflects the person's needs and their will and preferences.

02 Compulsory care criteria

MENTAL HEALTH ACT

Applies to people who meet the definition of 'mental disorder'. The definition requires the presence of an 'abnormal state of mind' that results in them posing a serious danger to the health and safety of themselves or others or having seriously diminished capacity to take care of themselves.

MENTAL HEALTH BILL

The legislation will only apply when a person has seriously impaired mental health and this causes or is likely to cause:

- serious adverse effects in the near future in the absence of compulsory care, and
- the person to lack capacity to make decisions about their own mental health care.

RATIONALE

The current legal test has been criticised by the public and experts as being too broad and enabling compulsory care that is not proportionate to the significant limits on human rights and other impacts of compulsion.

Changes are intended to:

- allow State intervention only when it is reasonable and proportionate
- ensure people who retain decision-making capacity are not compelled to receive mental health care
- support greater alignment with human rights
- modernise the language used to describe mental distress
- make definitions clearer, more accessible and better understood to reduce the risk of misuse or misdiagnosis.

03 Supported decision-making, including whānau involvement

MENTAL HEALTH ACT

Uses a substituted decision-making framework, does not have supported decision-making approaches and only supports these through guidelines.

Requires any person exercising a power to do it in a way that recognises the importance of the person's ties to their whānau. Anyone assessing a proposed patient or treating a patient must consult their family, unless it is not practicable.

MENTAL HEALTH BILL

Will support people to make decisions about their care, by including supported decision-making provisions, such as:

- Compulsory care directives: a mechanism for people to give directions on their future care such as statements on particular treatments and record preferences for personal affairs
- Nominated person: a person can nominate someone to represent their interests, this is likely to be a member of their family or whānau or other significant trusted person
- Independent support: persons employed by health services (such as a peer support worker or social worker) but independent of other decision-makers, to support tāngata whaiora
- Whānau hui: a forum for family, whānau and clinical staff, supported by a coordinator, to identify options for care when a person does not have other decision-making mechanisms in place.

RATIONALE

The current Act has been criticised for its lack of person-centred care and its lack of focus on the importance of family and whānau, as it does not explicitly provide for supported decision-making approaches.

Changes are intended to:

- support greater alignment with human rights
- empower people to have a voice in their own mental health care
- provide responsive care in a manner that is more respectful and enables greater autonomy and self-determination
- support minimising the use and duration of compulsion
- ensure people are viewed and treated in a holistic manner
- provide more robust family and whānau involvement in a person's care.

04 Compulsory assessment & care

MENTAL HEALTH ACT

Process includes an initial assessment, first period of assessment (up to 5 days), second period of assessment (up to 14 days) and then compulsory treatment orders, with opportunities for reviews and appeals. Assessments and treatment decisions are primarily made by a single responsible clinician.

Includes a right that people under the Act are entitled to medical treatment and other health care appropriate to their condition, but is not specific about the types of treatment, care and support they are entitled to.

MENTAL HEALTH BILL

Will have clearer statutory processes and require more frequent formal reviews of a person's legal status.

Will require comprehensive and holistic care planning, including transition planning when preparing to transition out of compulsory care. Needs assessment and provision of care will include a greater range of professionals and expertise alongside more robust involvement of family and whānau based on the wishes of the person.

RATIONALE

The current Act provides limited guidance on the care, treatment and support of people under the current Act. Some stakeholders have also said the Act is ambiguous and hard for people in the mental health sector to apply consistently.

Changes are intended to:

- be more human rights and choice focused
- support a more holistic understanding of a person's care
- provide more opportunities for exit from compulsory care
- better prepare and support a person when they are ready to exit from compulsory care
- ensure the views of the person, as well as their family and whānau, clinicians and other relevant professionals are considered in care planning.

WHAT HAPPENS NOW

05 Restrictive practices

MENTAL HEALTH ACT

Allows for people in compulsory care to be secluded when necessary for the treatment of a person or for the protection of other people.

Does not explicitly allow the use of restraint but does permit the use of force when exercising other powers.

06 Rights & complaints

MENTAL HEALTH ACT

Sets out the rights of people subject to compulsory assessment and treatment. Rights cover a range of matters including general rights to information, respect for cultural and ethnic identity and personal beliefs, and the right to legal advice.

These rights supplement the rights affirmed by the New Zealand Bill of Rights Act 1990 and set out in the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996.

Provides a process for making a complaint in relation to a breach or omission of rights.

07 Monitoring, oversight & reporting

MENTAL HEALTH ACT

Includes safeguards against inappropriate use of coercive powers.

Provides for a Director of Mental Health, with powers to enter and inspect facilities, people or records, alongside district inspectors and official visitors. The Director publishes an annual report, but this is not required under the Act.

Review Tribunals may be appointed to consider the condition of a patient on application, complaints and review treatment or detention decisions. Membership consists of a lawyer, psychiatrist and community member, with an additional member co-opted as necessary.

Anyone subject to compulsory assessment or treatment may appeal to the court.

08 People in the justice system

MENTAL HEALTH ACT

Once a special patient enters a forensic mental health service, they are entitled to the same care and treatment as any other compulsory patient. This includes services that meet their needs and rights under legislation.

Decisions about special patient leave from hospital for periods longer than seven days, and on eventual change of status or discharge, are currently made by the Minister of Health.

09 Children & young people

MENTAL HEALTH ACT

Applies to anyone regardless of age, and children and young people have all the same rights and protections as adults.

Special provisions relate to the application of the Act for children and young people (under the age of 17 years), for example requiring a specialist child psychiatrist to undertake assessments.

WHAT IS CHANGING

MENTAL HEALTH BILL

Will continue to allow restrictive practices but will provide mechanisms to significantly limit their use.

Will include a duty on mental health services to minimise the use of seclusion and restraint, with the overall goal of eliminating seclusion. Regulatory standards will be issued by the Director of Mental Health and there will be mandatory reporting of use of all restrictive practices.

MENTAL HEALTH BILL

Will largely maintain existing rights with updates to align with the new policy direction. Will include additional rights, such as the right for tāngata whaiora to be supported to make decisions and express their views, as well as explicit duties on specified persons to uphold rights.

Will extend rights to voluntary inpatients and give them access to the complaints process and review by district inspectors.

Will update complaints processes and include principles emphasising accessibility, timeliness, proportionality and restorative practices.

Will give district inspectors the ability to obtain advice from Māori experts, and a new power for the Director to direct health services to publicly set out how recommendations from district inspectors will be addressed.

MENTAL HEALTH BILL

Will largely maintain existing mechanisms and roles, with updates to align with the new policy direction. New roles will be added, including independent support and independent advocacy.

Will require membership of the Review Tribunal to consist of a qualified health practitioner, Māori member, tangata whaiora and a lawyer. Will retain ability to co-opt additional members to fill expertise gaps, with strengthened provisions to ensure ethnic, gender and/or disability representation if requested.

Will include greater reporting obligations, e.g. services must report on matters required by the Director and the Director must publish an annual report.

Will include statutory requirement to regularly review the policy and operation of the law.

MENTAL HEALTH BILL

Will maintain the existing rights to the same care, as well as applying the new supported decision-making approaches.

Will include a new review tribunal for forensic patients, which will decide on long-term leave and change of status.

Changes will not affect victims' rights to be informed of, and have a voice in, decision-making processes relating to leave or change of legal status for special patients, nor any other rights and protections (such as privacy) that victims have.

MENTAL HEALTH BILL

Will continue to apply to anyone regardless of age, including new supported decision-making approaches and protections.

Provisions that apply only to children and young people will largely remain the same, with updates to align with new policy direction,

s 9(2)(f)(iv) [redacted]

[redacted]

[redacted]

[redacted]

RATIONALE FOR CHANGE

RATIONALE

There has been a long-standing policy to reduce seclusion and restraint in mental health services, with the ultimate goal of eliminating seclusion. Changes are intended to:

- balance human rights and lack of therapeutic benefits, with the need to ensure the readiness of the system and workforce for change and avoid potential unintended consequences (e.g. increased use of other inappropriate forms of restrictive practices)
- ensure legislative settings support the policy to reduce restraint and eliminate seclusion
- ensure any patterns or frequency of restrictive practices can be closely monitored
- ensure that all other measures have been tried first so restrictive practices are only used as a last resort.

RATIONALE

Proposals to strengthen rights and improve the complaints process are a key part of achieving the direction of new legislation. There have also been concerns raised about the rights of voluntary patients, who may be at risk of coercion. Changes are intended to:

- strengthen rights and protections for tāngata whaiora
- further embed supported decision-making approaches
- ensure voluntary inpatients' rights are upheld
- improve the complaints process by making it more accessible, inclusive, timely and transparent
- better support tāngata whaiora to navigate the complaints process
- help ensure recommendations to resolve complaints are addressed.

RATIONALE

There are some issues with the current Act that affect the ability of the Director, district inspectors and Police to carry out their roles and responsibilities effectively. Changes are intended to:

- provide statutory powers necessary for the Director, district inspectors and independent advocates to perform their functions and duties
- strengthen the voice of tāngata whaiora and their whānau, and include a broader range of health professionals in the Review Tribunal
- help ensure the legislation is functioning in line with its policy intent
- ensure service providers are operating to the best model of care
- improve transparency.

RATIONALE

The Law Commission recommended in 2010 that Ministers no longer have a decision-making role in relation to special patients.

Changes are intended to:

- modernise the language used to refer to people entering through the criminal justice system
- improve independence of decision-making and procedural fairness for forensic patients who do not have an opportunity to be heard in existing processes.
- better promote the expertise of a range of people, including Māori, people with lived experience and clinicians
- ensure that additional public safety considerations are taken into account.

RATIONALE

There are opportunities to improve the experience of children and young people subject to compulsory assessment and care. Changes are intended to:

- affirm the rights of children and young people under the legislation, and support them to better exercise those rights
- better assist them to make and participate in decisions being made about them
- ensure a holistic approach is taken with regard to age and developmental stage.

Appendix B: Overview of implementation approach

This page provides a high-level overview of the broad implementation approach for new mental health legislation. Detailed work to support implementation will take place concurrently with the development of the legislation to ensure government and relevant stakeholders are prepared for when the new legislation commences.

KEY ENABLERS

New mental health legislation is intended to emphasise human rights, equity, recovery, and enable te ao Māori approaches within a legislative framework for compulsory mental health care. Implementing new legislation will build on the significant work and investment already underway to expand services and workforce as part of the wider transformation of New Zealand's approach to mental wellbeing as outlined in *Kia Manawanui Aotearoa: Long-term pathway to mental wellbeing.*

COLLABORATION

Description: Relevant agencies, including the voices of Māori and lived experience, work together to plan, design and deliver changes required to implement the new legislation.

Example of activity: Establishment of cross-agency working groups to lead implementation work.

COMMUNICATION

Description: The intent and requirements of new legislation are understood by those who will be implementing the legislation as well as tāngata whaiora, whānau and the general public.

Example of activity: Development of accessible information and materials to explain the requirements in new legislation.

WORKFORCE

Description: Growing and establishing the range of roles needed to ensure there is sufficient workforce in place to administer and implement the requirements of the legislation.

Example of activity: Defining new workforce requirements needed to implement the new legislation, in particular to embed te ao Māori approaches, including identifying the skills, competencies and attributes needed across mental health and kaiāwhina workforces.

PRACTICE CHANGE

Description: Practice shifts in line with the direction of new legislation, supporting a human rights, whānau-centred, culturally appropriate and recovery approach.

Example of activity: Developing or updating guidance/practice guidelines and training. Further investigation of critical factors needed to support the aim of eliminating seclusion and reducing restraint.

INVESTMENT

Description: There is sufficient investment to support implementation of the legislation.

Example of activity: Detailed estimates of funding required to implement new and additional activities. Continue to broaden the range of support and services available, including to enable te ao Māori approaches to compulsory mental health care, to be allocated through agreed multi-year Budgets.

MONITORING & REPORTING

Description: The implementation of the legislation is monitored and reported on to ensure that it is functioning in line with the policy intent.

Example of activity: Developing new regulations that prescribe the information that must be reported on.

TECHNOLOGY

Description: Digital tools support the effective operation of the legislation.

Example of activity: Developing the improvements or system updates needed to existing technology (eg PRIMHD, National Health Information Platform) to enable the new requirements.

INDICATIVE TIMELINE

The lead in time for commencement is needed to prepare for implementation. As a Bill is not final until it is enacted, some detailed implementation work will not be able to be completed or consulted on until the Bill is enacted.

The timeline below is indicative of the high-level phases of work required to support implementation. Detailed work will involve identifying what activities are already underway and what new or additional activities will be required. Note the timeline makes assumptions that will need to be updated once information is confirmed, this includes the budget process, and commencement date for the legislation.