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5 December 2024

S9(2)(a)

By email: S9(2)(a)

Ref: H2024057617

Tēnā koe S9(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 – Manatū Hauora (the Ministry), which was transferred from the office of the Minister for Mental Health, Hon Matt Doocey about the Mental Health Bill (the Bill). Please find a response to your request below.

*Have the provisions of section 114 of the Mental Health (Compulsory Assessment and Treatment) Act ever been applied since the Act was adopted in 1992?
Please provide a summary of any cases in which the section 114 provisions have been applied*

The provisions of section 114 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) have not been used since the enactment of the Mental Health Act.

It should be noted that the Crimes Act 1961 has sections that also allow for charges to be considered for ill-treatment or neglect of children or vulnerable adults (sections 151 and 195). These sections have more significant penalties than section 114 of the Mental Health Act and are more likely to be used in the circumstance of an offence.

What specific advice has informed the inclusion of a similar provision (section 190) in the Mental Health Bill currently before the Health Select Committee

Cabinet made policy decisions about new mental health legislation in December 2022 and July 2023, which are reflected in the Mental Health Bill. As part of those decisions, Cabinet agreed that new legislation should carry over the existing administrative, monitoring and reviewing mechanisms, including the offences and penalties provisions. Any legislation authorising the use of compulsory mental health care needs mechanisms for monitoring and reviewing the use of such powers.

During the drafting of the Bill, the Ministry of Health consulted with the Offence and Penalty Vetting team at the Ministry of Justice on the offence provisions. As a result of consultation with the Ministry of Justice, the penalty for the offence of neglect or ill-treatment (clause 190) was raised from 2 years to 5 years imprisonment to align with a similar offence in section 195 of the Crimes Act that has a penalty of 10 years imprisonment.

I trust this information fulfils your request. If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: oiagr@health.govt.nz.

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 or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā



Kiri Richards
Associate Deputy Director-General
Clinical, Community and Mental Health | Te Pou Whakakaha