



Transforming Mental Health Law in Aotearoa New Zealand



Te Kāwanatanga o Aotearoa
New Zealand Government



**MINISTRY OF
HEALTH**

MANATŪ HAUORA

Creating new mental health legislation in Aotearoa New Zealand

We are transforming Aotearoa New Zealand's approach to mental health and addiction, so that people can get the support they need, when and where they need it. Ensuring we have fit for purpose legislation is one part of this transformation.

The Mental Health (Compulsory Assessment and Treatment) Act became law in 1992. It has not kept pace with new approaches to care, and statistics show that Māori, Pacific peoples, and disabled people experience a range of inequities under the Act.

Although the current Mental Health Act is only used for a small proportion of people each year, it has a big impact on the lives of those who do experience it, and their family and whānau.

We have heard why change is needed, and the next step is to get clear direction for what mental health legislation in New Zealand should look like. We have an opportunity to create new mental health legislation that protects human rights, recognises Te Tiriti o Waitangi, and improves equity.

We are now opening public consultation to gather information and feedback that will inform the design of the new legislation.



About the current Mental Health Act

The current Mental Health Act sets out when, why and how the government can intervene in a person's life to give them mental health treatment against their will. The Act currently applies to anyone, including children.

Before someone can be put under compulsory assessment or treatment, the person must be considered to have 'an abnormal state of mind' and there must be signs that the person might pose a serious danger of harm to themselves or others, or be unable to take care of themselves.

Compulsory treatment limits the right of people to refuse medical treatment, as outlined in the New Zealand Bill of Rights Act 1990. This means that – for the first month – a person must accept medication or other mental health treatment prescribed by their responsible clinician, whether they agree to the treatment or not.



Why the current Mental Health Act is being replaced

Statistics show that Māori and Pacific peoples are significantly more likely to be subject to compulsory mental health treatment under the current Mental Health Act than people of other ethnicities. Māori are five times more likely to be secluded than non-Māori.

Many people and organisations say compulsory mental health treatment doesn't uphold people's rights, including the rights contained in Te Tiriti o Waitangi and the universal rights to autonomy (independence) and freedom from interference.



Creating a new approach

We can create new mental health legislation that respects the rights of individuals, family and whānau, recognises Te Tiriti o Waitangi and improves equity.

The legislation should be a last resort for people in a vulnerable and distressed state. The care and treatment provided through legislation should be delivered in a way that recognises a person's strengths, and new legislation should promote the safety of people, whānau and communities.

There are many things to consider, and we need your help in shaping the future of mental health legislation in New Zealand. We want to hear your views on the following topics:



Embedding Te Tiriti o Waitangi and addressing Māori cultural needs

The current Mental Health Act does not formally acknowledge, or adequately represent or support te ao Māori or Te Tiriti o Waitangi (in legislation or in practice). We want to know how legislation can support embedding Te Tiriti o Waitangi into practice, and what kaupapa Māori principles should be incorporated into the new legislation.

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Defining the purpose of mental health legislation

We want to explore why we need mental health legislation in Aotearoa New Zealand. This includes thinking about how legislation should balance different human rights and whether legislation should ever allow a person to be forced to have mental health treatment (compulsory treatment).

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Capacity and decision-making

If you think that there are times when compulsory treatment should be allowed, we want to know when it should be allowed.

Whether a person is able to make choices for themselves is called decision-making capacity. It is a key part of deciding whether compulsory treatment should be allowed, because many other countries only allow compulsory mental health treatment if the person does not have capacity (is not able) to make a decision about their treatment.

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Supporting people to make decisions about their care and treatment

We want to find out how legislation can ensure people are supported to make their own decisions about mental health and treatment, and what tools or processes people could use. We also want to know whether a decision made with supported decision-making could ever be overturned.



The use of seclusion, restraint, or other restrictive practices

We want to know whether new legislation should ever allow the use of seclusion, restraint, or other restrictive practices and if so, what requirements should be in place to make sure people's rights are protected, staff and people using services are safe, and that these restraints are rarely used.



Addressing the needs of specific populations

There are certain populations which will need special consideration under any new mental health legislation, and we want to find out how legislation should address the needs of these groups. These include people with different cultural backgrounds; disabled people; families, whānau, āiga, and carers; children and young people; and people within the justice system.



How to ensure people's rights are protected and monitored

If new legislation continues to allow for compulsory mental health assessment and treatment, then there must also be ways to make sure people are protected. This includes having fair and transparent legal processes, ways to regularly review compulsory treatment, and the ability to challenge compulsory treatment decisions.

How to get involved

Submit your views

You are invited to give feedback on the whole discussion document or just the parts you are most interested in or impacted by. You might have other views and concerns that we have not captured, and we encourage you to tell us about these.

Consultation is open until **28 January 2022** and you can get help to prepare and submit your submission.

You can provide feedback by:



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Making an online submission at **consult.health.govt.nz**



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Answering the questions in the consultation document and emailing your responses to **mhactreview@health.govt.nz**



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Answering the questions in the consultation document and sending a hard copy to:
Consultation: Transforming mental health law in Aotearoa New Zealand
Ministry of Health
PO Box 5013
Wellington 6140



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Read more about the consultation on the Mental Health and Addiction page of the Ministry of Health website **health.govt.nz**