



Social Service
Providers
Aotearoa

Submission to the Ministry of Health on repealing and replacing the Mental Health (Compulsory Assessment and Treatment) Act 1992

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Contact person for anything relating to this Submission:
Fiona Bawden, Policy & Information Advisor | policy@sspa.org.nz

Introduction & Background

1. Social Service Providers Aotearoa (SSPA) welcomes the opportunity to contribute to Manatū Hauora Ministry of Health's transformation of Aotearoa's approach to mental health and addiction. This submission provides SSPA's views and feedback on the content of the discussion document¹ on the repeal and replacement of the Mental Health Act.
2. Our submission contributes to the engagement process facilitated by the Ministry of Health by highlighting the importance of this kaupapa for children, rangatahi and their families and whānau. For many years now, significant numbers of children, rangatahi, families and whānau have been and are continuing to experience complex and multiple disadvantages and stressors, which are seriously impacting their wellbeing and ability to thrive. This includes detrimental impacts on the mental health of children and rangatahi, and their families and whānau.
3. With the COVID-19 pandemic now having entered a new phase in Aotearoa New Zealand, this is bringing greater risk for children, rangatahi, families and whānau—especially those already experiencing inequities. SSPA's member organisations are community-based social service organisations around the motu, working with children, rangatahi, families and whānau every day. Our members are conscious of the potential for family harm, suicide and other mental health impacts as the situation continues evolving, and in the aftermath of the outbreak and its long-term impacts on family and whānau wellbeing.²
4. The wider spread of the Delta and Omicron strains also raises significant challenges for our community-based social services – at organisational levels and at the individual social service kaimahi level. It is vital that the Government and other key decision-makers take these factors into account in the development of legislation, policy and frameworks, given the ongoing and potentially intergenerational impacts on child, rangatahi, family, whānau and community mental health in Aotearoa.

SSPA's position on this kaupapa

5. SSPA strongly supports the intention of replacing the current Mental Health Act, which is resulting in unfair, unjust and avoidable worse outcomes for Māori, Pacific, those with disabilities and those living in areas of high deprivation. Addressing these issues through new legislation is essential to creating the enabling environment for improving care and treatment for those who are currently compulsorily assessed and treated in Aotearoa.
6. We welcome the creation of new legislation that protects and respects human rights, implements the principles of Te Tiriti o Waitangi and improves equity. The new legislation should ensure that systemic inequities are addressed that exist under the current framework, thereby supporting improved outcomes for people in their most vulnerable states.
7. Our submission focuses largely on advocating for:

¹ https://consult.health.govt.nz/mental-health/transforming-mental-health-law-in-new-zealand/supporting_documents/Transforming%20our%20Mental%20Health%20Law.pdf

² Covid-19 2021 Delta Outbreak Noho Rāhui: A snapshot from the community-based social services perspective https://www.sspa.org.nz/images/SSPA_Delta_Covid-19_Snapshot_Oct_2021_-_final_for_web.pdf

- a) Government to place a significant focus on work that will contribute to lifting and supporting the mental health and wellbeing of children, rangatahi, families and whānau in Aotearoa to thrive; and
 - b) Government to take an intergenerational approach to mahi in the mental health space.
8. Given its impact on children and their whānau, SSPA strongly calls for any new mental health legislation and associated policies to be developed utilising the Child Impact Assessment Tool (CIAT).³ This should assist in assessing how the new policies and legislation will impact on children and their rights and wellbeing. We note that implementation of the CIAT across government is stated as an action in the Child and Youth Wellbeing Strategy.⁴
 9. SSPA champions the work of community-based social service organisations and their kaimahi working around the motu providing practical help in moments of hardship and struggle, sometimes during crisis, including mental health crisis. In many instances, our member organisations are working alongside children, rangatahi, families and whānau over the long-term, through the complexity of multiple, persistent challenges where mental health impacts and issues are often present. In this mahi, SSPA members are every day playing an essential role in supporting positive mental health and wellbeing outcomes that are enduring.

About Social Service Providers Aotearoa

10. Social Service Providers Aotearoa (SSPA) is a membership-based national peak body, comprised of over 200 community-based social service organisations from around Aotearoa, based in both rural and urban locations⁵. Among our members are kaupapa Māori and Iwi organisations, Pacific providers, region-specific and national social service providers. SSPA members work across the full spectrum of community-based social services with a central focus on supporting the positive outcomes of children, rangatahi, families and whānau.
11. SSPA full members are funded by government to deliver social services in our communities every day, with a predominant focus on children, rangatahi, families and whānau. Our affiliate members are organisations that deliver social services for these people, and organisations and individuals who work in areas aligned to the interests of children, rangatahi, whānau or communities.
12. SSPA's vision is that Aotearoa's NGO social services are sustainable, able to make a positive impact every day in our communities, supporting children, rangatahi and whānau to thrive now and into the future. SSPA works to strengthen Aotearoa's social sector through advocacy and engagement, learning and development, relationships and sector leadership.

³ <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>

⁴ See: <https://childyouthwellbeing.govt.nz/sites/default/files/2019-08/child-youth-wellbeing-strategy-2019.pdf> at p.56.

⁵ Find out more about SSPA at www.sspa.org.nz Our strategic plan 2021-23 can be found at https://www.sspa.org.nz/images/SSPA_Strategic_Plan_2021-23_Final_version_for_web.pdf

Embedding Te Tiriti o Waitangi and addressing Māori cultural needs

13. SSPA supports the view (articulated by the Ministry of Health in its discussion document) that the new legislation must recognise Aotearoa New Zealand's bicultural foundations and be based on Te Tiriti o Waitangi and its principles, and be grounded in Te Ao Māori approaches. SSPA sees these things as being foundational to the new Mental Health law setting an effective framework. We believe that work together with and informed by the whakaaro and solutions that sit within Iwi, hapū and whānau should be central in the development of new mental health and wellbeing legislation. Grounding the new legislation firmly in Te Ao Māori perspectives and approaches should have benefits not only for tangata whenua, but for all people in Aotearoa.
14. We agree that the following Treaty of Waitangi principles (articulated by the Ministry of Health in its discussion document) should be incorporated in the new legislation. The principles of partnership; active protection; equity; and options have been articulated in *Waitangi Tribunal Report on Wai 2575*⁶ and we think that clearly embedding these within legislation and policies will support equitable outcomes for Māori. As stated by the Waitangi Tribunal:

*“These principles require the Crown not only to recognise and provide for Māori to act in partnership with the Crown in designing and providing health services for Māori but also to design and provide services that actively pursue equitable Māori health outcomes. In doing so, the Crown must focus specific attention and resources on Māori where they experience inequitable outcomes, ensuring that Māori who need to use health services are treated equitably and can access health services which do not discriminate against them by being inadequate, culturally incompatible, or inequitably funded.”*⁷
15. SSPA is of the view that utilising a Te Ao Māori wellbeing framework such as He Ara Waiora will assist to implement Te Tiriti in practice, including for whānau and their mokopuna. The principles of He Ara Waiora are derived from mātauranga and tikanga Māori which presents many concepts to support lifting the intergenerational wellbeing of all New Zealanders. For an example of how this is used to guide and present analysis, this Treasury Discussion Paper⁸ analysed the wellbeing impacts of COVID-19 through the lens of He Ara Waiora.
16. We note that in new legislation such as a new Mental Health Act, the use of language will be important in addressing equity and achieving equitable health outcomes for Māori. ‘Reducing disparities’, or ‘reducing inequalities’ cannot be considered the equivalent to the goal of health equity, as stated in *Waitangi Tribunal Report on Wai 2575*. SSPA believes that it is important to take care with framing how expectations of equity are expressed in the legislative and policy framework, and to do so in a strengths-based manner.
17. We emphasise that direct engagement with whānau Māori and with Iwi and hapū should form a central part of creating new legislation. This will be important to inform which kaupapa Māori principles and Te Ao Māori frameworks may be able to form the grounding backbone of the legislation.

⁶ Wai 2575, Waitangi Tribunal Report 2019, Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_152801817/Hauora%20W.pdf

⁷ Pg 66 of Wai 2575, Waitangi Tribunal Report 2019, Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_152801817/Hauora%20W.pdf

⁸ He Kāhui Waiora: Living Standards Framework and He Ara Waiora COVID-19: Impacts on Wellbeing <https://www.treasury.govt.nz/sites/default/files/2020-08/dp20-02-covid-19-impacts-on-wellbeing-v2.pdf>

18. While SSPA encourages the creation of new legislation, we do believe that the findings from stage two of the Waitangi Tribunal Wai 2575 Inquiry⁹ will be important to take into account in this work on a new Mental Health law. We note the three priority areas that the Tribunal will report on are: Māori mental health; Māori with disabilities; and issues of alcohol, tobacco and substance abuse. We see these kaupapa and the findings of the Tribunal as being important in the process of creating new legislation on mental health and wellbeing. We query the urgency of developing new legislation and not waiting for the Tribunal's findings.

The purpose of mental health legislation

19. SSPA commends the Government for accepting the recommendation of *He Ara Oranga* to repeal the current Mental Health Act and replace it with legislation that enhances and protects people's rights to participate in and make decisions about their health and life and respects their autonomy. As *He Ara Oranga* states:

*"Any new Act needs to reflect a human rights-based approach, align with the recovery and social wellbeing model of mental health, and support the role of families and whānau and significant others, while retaining and building on the strengths of existing legislation."*¹⁰

20. SSPA strongly supports this statement from *He Ara Oranga*. We agree that the new legislation should be consistent with Aotearoa's obligations under international and domestic human rights law. In particular, SSPA advocates for the new legislation to be consistent with and reflective of:
- a) the United Nations Convention on the Rights of Persons with Disabilities (CRPD)
 - b) the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
 - c) the United Nations Convention on the Rights of the Child.
21. SSPA's view is that the new legislation needs to do more than just recognise Te Tiriti o Waitangi, going further to meaningfully embed Te Tiriti at the heart of this legislation, and ensuring Treaty principles are integrated to provide the framework and requirement for effective health pathways and equitable outcomes.
22. SSPA urges reconsideration of the position outlined in the discussion document that it is beyond the scope of legislation to consider the influences on a persons' mental wellbeing. We agree with the statement in the discussion document that a persons' mental wellbeing can be influenced by a number of factors including family and whānau and social dynamics, living environment, financial stability, employment and housing. The delivery of quality, affordable and timely mental health care and treatment relies on a whole system of providers and services operating efficiently and effectively. SSPA urges that the new legislation consider these factors and this reality, in order for it to be effective for all New Zealanders. We note that this is helpfully expressed in *He Ara Oranga* as follows:

"legislative change on its own will not drive systemic change. New Zealand's legislative framework for mental health and addiction can work only in a well-functioning system that

⁹ Wai 2575, Waitangi Tribunal Report 2019, Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_152801817/Hauora%20W.pdf

¹⁰ He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction <https://www.mentalhealth.inquiry.govt.nz/inquiry-report/he-ara-oranga/chapter-11-mental-health-act-reform/11-2-what-needs-to-happen/>

recognises human rights and supports recovery, participation, capacity-building, prevention and early intervention, thereby reducing the need to invoke powers of coercion and enforced treatment. Legislative change also needs to be supported by clear guidance and clinical best practice that promotes supported decision-making and provides measures to minimise compulsory or coercive treatment.”¹¹

23. *Kia Manawanui – Long-term Pathway to Mental Wellbeing* provides the government’s direction and vision for the overall transformation of mental health care in Aotearoa.¹² However, it is important that new legislation sets clear timeframes on delivery of these objectives and holds to account those in positions of responsibility for these work programmes. Directions in guidelines do not have the same force as requirements in legislation. Given that this legislation is intended to improve equity as well as being used as a last resort, it is important that the factors influencing mental wellbeing are included in the legislation, as well as including a focus on the parties involved in delivering mental health care. Coverage of both these aspects is also key given the need for this legislation to be delivered in a strengths-based, socially inclusive way, and for it to support specific populations while being grounded in Te Ao Māori.

How new mental health legislation can support positive outcomes for children, rangatahi, families and whānau

24. All children, rangatahi and their families and whānau should be able to experience thriving mental health and wellbeing. Every child has a right to experience the highest attainable standard of health (under Article 24 of the UN Convention on the Rights of the Child), which includes both mental and physical health. All children and rangatahi should be able to access effective mental health support in their communities, on both an equitable and timely basis and in ways that work for their specific needs, such as their culture or disability. Families and whānau should be able to be equipped to support their loved ones in times of need, and to access mental health support and care services that meet family or whānau specific needs.
25. SSPA supports the view (articulated by the Ministry of Health in its discussion document) that any new mental health law that considers human rights or decision-making capacity to include special considerations for children and rangatahi. We note that the use of the Child Impact Assessment Tool (CIAT)¹³ should assist in assessing how the new policies and legislation will impact on children and their rights and wellbeing, and should be used to help guide and shape the legislation and associated policies. We also emphasise the importance of engagement with children and rangatahi to have their views heard as part of creating new legislation. It is important for children and rangatahi to share their views and perspectives in order to help shape new policies and legislation that affect them – including this new mental health legislation. This is also consistent with children’s rights to participate in matters affecting them under Article 12 of the UN Convention on the Rights of the Child, and hearing the views of children and young people is a specific focus of the Child and Youth Wellbeing Plan.

¹¹ He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction
<https://www.mentalhealth.inquiry.govt.nz/inquiry-report/he-ara-oranga/chapter-11-mental-health-act-reform/11-2-what-needs-to-happen/>

¹² https://www.health.govt.nz/system/files/documents/publications/web3-kia-manawanui-aotearoa-v9_0.pdf

¹³ <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>

26. The role of family, whānau, hāpu and Iwi must also be a central consideration within the legislation. Supported decision-making should be a focus within the law, in order to ensure a strengths-based approach is reflected when it comes to decision-making. While the Family Group Conference model used in the child protection system is not perfect in how it operates, it does show that there are models for making decisions in the best interest of an individual, grounded in family and whānau collectivity. These kinds of approach could be helpfully explored within this legislative reform.
27. SSPA believes that a whole-of-system, holistic approach to understanding and protecting the wellbeing of children, rangatahi, families and whānau is vital for addressing the complex and intersecting factors that are leading to poor mental health outcomes in Aotearoa.
28. The current Government has a focus on the wellbeing of children and young people in Aotearoa, and SSPA believes that children's rights and wellbeing should be above party politics, an area that should enjoy strong cross-party support and which should be a priority of successive governments. We note the recent Cabinet paper *"Delivering on the Child and Youth Wellbeing Strategy: Update on implementation and next steps"*¹⁴ observes that many children and young people are not experiencing a good life, with the paper noting that New Zealand performs poorly in areas such as child poverty, child safety, bullying, youth suicide and a sense of belonging for rangatahi. The paper again emphasises the significant inequities being experienced by tamariki and rangatahi, and Pasifika children and young people, in relation to their wellbeing. The paper highlights that while progress is being made in areas of disadvantage relating to children and young people, significant system shifts are still needed, so that every child grows up able to thrive.¹⁵
29. Children and rangatahi themselves have already been clear that belonging and inclusion, and living in a society free of discrimination, violence and racism is essential to their ability to experience lives where they can enjoy all of their rights under the UN Convention on the Rights of the Child, for tamariki and rangatahi to experience their rights as tangata whenua under Te Tiriti o Waitangi, and to experience holistic wellbeing and hauora.¹⁶ Children are taonga, and whānau-centred policy, legislation and delivery is the way forward for progress on child and whānau wellbeing in Aotearoa.¹⁷

¹⁴ Delivering on the Child and Youth Wellbeing Strategy: Update on implementation and next steps <https://dpmc.govt.nz/sites/default/files/2021-05/delivering-cywb-strategy-update.pdf>

¹⁵ Delivering on the Child and Youth Wellbeing Strategy: Update on implementation and next steps <https://dpmc.govt.nz/sites/default/files/2021-05/delivering-cywb-strategy-update.pdf>

¹⁶ E.g. see: Child and Youth Wellbeing Strategy <https://childyouthwellbeing.govt.nz/resources/child-and-youth-wellbeing-strategy>, What Makes a Good Life? Children and young people's views on wellbeing <https://www.occ.org.nz/assets/Uploads/What-makes-a-good-life-report-OCC-OT-2019-WEB2.pdf> and Education Matters to Me <https://www.occ.org.nz/assets/Uploads/OCC-STA-Education-Matters-to-Me-Key-Insights-24Jan2018.pdf>

¹⁷ View the SSPA Agenda for Change which sets out the transformational change SSPA is advocating for in relation to Aotearoa's social service sector and for children, rangatahi, families and whānau outcomes: https://www.sspa.org.nz/images/A3_Big_Ideas_final_July_2020.pdf

A fairly funded and sustainable NGO social service sector to support mental health and wellbeing, and taking a collective approach

30. Working together with and as communities in a collective, community-driven approach is, in SSPA's view, essential to making significant progress for mental health and wellbeing in Aotearoa, now and into the future. The opportunity exists right now to make some systemic shifts that are embedded, and which can result in tangible positive differences in the lives of children, young people, families and whānau.
31. An overarching aim should be for our communities to have equitable access to the resources, services and capabilities they require in order to thrive, grounded in Te Tiriti o Waitangi, and where children and young people feel a true sense of belonging, no matter their identity. SSPA is ready to support and contribute to these shifts to support and strengthen thriving families and whānau in communities throughout the motu.
32. SSPA envisages that community-based social service providers will be key actors in long-term sustainable shifts in mental health and holistic wellbeing in Aotearoa, in particular for children, rangatahi, families and whānau. However, the long-standing challenges for the NGO and Iwi social service sector must be addressed, so they can deliver to their full potential and meet the needs of their communities. This includes addressing the approximately \$630 million annual funding gap between what government funds NGO social service providers to provide, and the actual costs of delivery.¹⁸ Although there have been some positive changes to funding levels and contracting approaches since 2019, these have not been systematised and the significant funding gap still exists. Other issues that must be addressed for community-based social services to continue to effectively contribute to addressing mental health and wellbeing in Aotearoa include addressing pay equity for community-based social service kaimahi, addressing silo-ing of funding and the lack of a joined-up approach from government.
33. In this regard, SSPA notes that there is currently progressive work underway commissioned by the Minister for Social Development and Employment and led by the Ministry of Social Development Te Manatū Whakahiato Ora, to improve the commissioning of social services across Aotearoa.¹⁹ This work is seeking to address current concerns about pressure points such as funding, procurement, monitoring and evaluation, among others. SSPA is a member of the Project Board for this mahi and advocates that any changes in the way social sector commissioning is undertaken must lead to NGO social services being better enabled to contribute to wellbeing in Aotearoa through mahi with children, rangatahi, families and whānau. This mahi should be seen as directly relevant to the mental health and wellbeing space, as it will help in contributing to a supporting environment for the implementation and impact of new mental health legislation.
34. Finally, SSPA notes that bringing government and community-based responses increasingly together grounded in collective and relational ways of working needs to

¹⁸ [https://www.sspa.org.nz/images/Social_Service_System - The Funding Gap and How to Bridge It - FULL REPORT FINAL.pdf](https://www.sspa.org.nz/images/Social_Service_System_-_The_Funding_Gap_and_How_to_Bridge_It_-_FULL_REPORT_FINAL.pdf)

¹⁹ <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/planning-strategy/social-sector-commissioning/msd-social-sector-commissioning.pdf>

be a focus of Government when it comes to addressing mental health and wellbeing. People and whānau are best supported by integrated community services grounded in local communities and which are informed by the aspirations and needs of the whānau, hapū, Iwi, families, children and young people that they serve. This underscores what SSPA sees as central to the question of where Government should focus its attention on when addressing mental health and wellbeing in Aotearoa New Zealand: a collective approach, drawing on the strengths that exist and placing emphasis on people's inherent strengths, focusing on children and tamariki as taonga, and on strengthening the ability of families, whānau and communities to thrive in a state of holistic intergenerational wellbeing.

SSPA looks forward to contributing to this mahi further as it progresses. Please feel free to contact us for our input at any time.