



Submission to the Ministry of Health on *Transforming our Mental Health Law*

INTRODUCTION

E hara taku toa i te toa takitahi, he toa takitini.

My strength is not as an individual, but as a collective.¹

1. Thank you for the opportunity to provide a submission on your review of Aotearoa New Zealand's Mental Health Law. The Aotearoa New Zealand Association of Social Workers (ANZASW) strongly supports the repeal and replacement of the Mental Health Act.
2. Whilst ideally there would not be a need for compulsory mental health treatment, this is an ambitious goal and would require a re-designed and well-functioning mental health system to be achieved. Whilst greater transformation of our mental health system is underway, we accept there is a need for legislation to safeguard the safety and wellbeing of individuals in the most extreme of cases.
3. The new Mental Health legislation must be centred on Te Tiriti o Waitangi; human-rights; and recovery- and wellbeing-based approaches, which enhance mana and restore capacity. Our discussion is based on these three pou, before turning to the value of social work within the mental health system.
4. We would welcome further engagement with the Ministry. In particular, we would like to be able to discuss how social workers can be better used within mental health services and through the administration of the Act.

DISCUSSION

EMBEDDING TE TIRITI O WAITANGI

5. We strongly support Te Tiriti o Waitangi and te ao Māori as being central components of the new legislation, through its purpose and principles. We agree Te Tiriti o Waitangi obligations of tino rangatiratanga, active protection, options, and equity must be strong components of the legislation. There must be sufficient and meaningful engagement and partnership with tangata-ō te whenua to establish how these obligations are outworked within the legislation.
6. In our view, at a minimum, the legislation should require culturally appropriate care (for all ethnicities, but especially for Māori). We support the use of whānau-led or supported decision-making, adopting a holistic approach to wellbeing, and integrating whānau and cultural knowledge. Including family and

¹ Alsop, P., & Kupenga, T. R. (2016). Mauri Ora: Wisdom from the Māori World. Pottan & Burton. Page 117.

whānau in decision-making is vital when considering actions under mental health legislation. The inclusion of whānau must be meaningful and include treatment decisions.

7. We recommend further partnership by the Ministry with Māori to design how these processes should work and therefore what are the legislative settings required to implement these.

A HUMAN RIGHTS APPROACH

8. A central component of the new legislation must be the upholding and protection of human rights. Compulsory mental health treatment essentially removes an individual's rights in several key areas, such as their freedom, autonomy, dignity, self-determination and tino rangatiratanga. We are of the view the new legislation must explicitly state in the purpose and principles that preservation of human rights must be given the highest regard when applying the Act.
9. The Convention on the Rights of Persons with Disabilities purports that compulsory mental health treatment, through the use of substituted decision-making, must be abolished. However, New Zealand Bill of Rights Act 1990 allows for certain situations where an individual's liberties can be justifiably limited to ensure the protection of the safety of individuals (Wharehoka, 2021).
10. We agree with the balanced approach proposed by Wharehoka (2021; p. 242-244). A balanced approach would entail prioritising supported decision-making, and only used substituted decision-making when there is significant risk of harm.
11. A supported decision-making approach must be primarily used. Consent should be obtained through implementing supports and through ascertaining the individual's "will and preference". The supported approach should adapt for an individual's capacity. An individual's family/whānau, hapū, iwi, and family group should be involved in this process (where appropriate). Informed consent must include information about potential treatment options, effects of the treatment and the benefits of the treatments. Central to the approach is the implementation of external support mechanisms, including ensuring access to programmes and support to enhance quality of life. Consideration and addressing the social determinants of mental health becomes essential. Furthermore, an individual's culture and worldview must be a paramount consideration within this approach.
12. We advocate for a capacity assessment to be completed (by a social worker) as part of the supported decision-making process. This assessment would inform the approach and level of support required to make decisions about their care. In some situations, a person may be assessed as wholly lacking capacity to make decisions about their care. In these situations, restoration of capacity should be the primary focus and a more formal substituted decision-making process may be needed if there are significant risks of harm. A documented capacity assessment must be required in the legislation. Principles pertaining to mental capacity (particularly the decision specific, time limited and least restrictive nature of this assessment) and interpretation should be included to ensure this assessment process is applied consistently by all practitioners and individual's rights are safeguarded and reviewed.
13. Substituted decision-making may only be used in situations where an individual's will and preference would result in significant risk of imminent and serious harm (i.e., actual, or threatened physical harm or an inability to care for themselves to such an extent) to themselves or others. This threshold requires a very high standard (much higher than the current interpretation and like the threshold required for criminal incarceration), and it must be the same standard for those who do not have mental illness.
14. Any compulsory treatment must be the least restrictive measure, independently reviewed regularly, and must be for the least amount of time as possible (i.e., until the risk is no longer imminent or serious;

the individual is able to engage in supported decision-making). There must be regular, independent reviews.

15. Given the shift in approach proposed, we recommend that applications for compulsory treatment are made by a social worker with supporting evidence provided by the psychiatrist. We recommend nurses are not utilised for this role, given the alignment of medical models which tend to be deficit-focused, rather than mana-enhancing and strengths-based. The proposed approach is significantly different from psychiatric and nursing models of care. In our view, this approach requires the discipline of social work to work alongside the medical professions to ensure individuals are provided with holistic care, in reference to their wider psychosocial situation and available support to aid recovery.

Defining treatment

16. The current Act does not adequately define treatment and a very broad interpretation is available. In our view, the new legislation should define available treatment options, and which circumstances they may be used.
17. The use of compulsory treatment orders in Aotearoa New Zealand has been largely to compel treatment using medication, with those with a psychotic disorder diagnosis having reduced admission frequency and length, compared with those who did not have a psychotic disorder diagnosis (Beaglehole et al., 2021). Those with a non-psychotic disorder diagnosis had increased admission frequency and length, suggesting compulsory treatment is not beneficial for this group. We are concerned that most psychiatric medications are required to be taken for extended periods of time and that a treatment decision (such as compelling an individual to take medication) could have consequences beyond the life of a treatment order (especially within the initial periods of “assessment” in the current legislation). In our view, this would be a breach of the individuals human rights and the new legislation must carefully deal with these scenarios.

The use of seclusion and restraints

18. We do not support the use of seclusion in any setting as it breaches human rights and is incompatible with a recovery approach. It is our view that the use of seclusion should be explicitly prohibited within the new mental health legislation.
19. The use of restraint (including sedation or use of medication, such as Acuphase, as a form of chemical restraint) should be minimised and there be strict safeguards in place around its use and how these are reported on. Restraint should only be used when there is an imminent risk of danger to the individual or others and no other safe and effective alternative is possible. Any use of restraint (including sedation) must be reported on and reviewed by management. The review of restraint must consider recommendations for changes to care plans.
20. Furthermore, we recommend reporting through to a monitoring body, such as the Health and Disability Commission or other similar independent body, as an additional safeguard against the overuse of restraint. The Health and Disability Commission should be given monitoring and investigation powers to ensure the appropriate use of restraints.
21. All patients subject to a compulsory treatment order should have clear care plans, that include specific de-escalation techniques relevant to them. The focus must be on de-escalation, strengthening of protective factors and support to implement coping strategies, and prevention of escalation.
22. Similarly, all providers of compulsory treatment (hospitals and community) must have clear risk management plans, policies, and processes for the use of restraint. There should be requirements for all staff to undergo regular training in de-escalation techniques and restraints should only be utilised by authorised and certified staff.

A RECOVERY APPROACH

23. A recovery approach to mental health sees “professionals work towards ‘supporting an individual to improve their health and wellbeing, live a self-directed life and strive to reach their full potential’ (Te Pou o te Whakaaro Nui and Ministry of Health 2018). The recovery approach is the predominant paradigm in Aotearoa New Zealand mental health policy and practice” (Ministry of Health, 2020). A recovery approach draws on a holistic approach, drawing on strengths, considers the social determinants of mental health, and supports hope, empowerment, and social connectedness.
24. We agree that a recovery approach to mental health is aspirational, however, the current definitions provided by the Ministry of Health (2020) are individualistic and do not consider the cultural context of Aotearoa New Zealand. The current approach focuses on individual wellbeing, rather than collective wellbeing. The Māori concept of *pae ora* is being used within the health setting and we believe this could be a useful definition within the new legislation. “Pae ora is a holistic concept and includes 3 interconnected elements:
- Mauri ora – healthy individuals
 - Whānau ora – healthy families
 - Wai ora – healthy environments” (Ministry of Health, 2015).
25. We propose a new working definition of a recovery approach could be:
A recovery approach to mental health sees professionals partnering with individuals and their whānau, family, hapū, iwi, and support network to achieve pae ora. It involves adopting a holistic approach; drawing on strengths; considering, and addressing where necessary, social determinants of mental health; and supporting hope, empowerment, and social connectedness.
26. The use of a holistic approach to wellbeing aligns with Māori models of health, such as Durie’s Te Whare Tapa Whā. Boot and Lowell (2019) commented indigenous people (including Māori) “tend to regard health and wellbeing as a holistic, multidimensional, and interconnected concept that cannot be separated from other aspects or fragmented into distinguishable individual units” (p. 3). It is our view that the legislation must prioritise collective and holistic wellbeing.
27. We are of the view the recovery approach is not effectively applied across mental health services in Aotearoa New Zealand. Our mental health system is extremely stretched, and this has meant a recovery approach cannot be effectively implemented. We have heard from our members that decisions are often made based on resource availability, rather than what is in the best interests of the person. We believe our mental health system must support early access to support and services and providing resources and support to whānau to support recovery. There is already significant work underway to transform our mental health system, however, a change in legislation will only be successful when all these factors align.
28. In line with a recovery approach, we recommend consideration is given to ensuring processes of the new legislation occur in mana-enhancing environments. We understand assessments (particularly after hours) often occur in Emergency Departments (which is better than a Police station), however, there can be long wait times to be seen by mental health staff and these environments are not always the most suitable. Often security staff are positioned close by, and this can leave individuals feeling stripped of their mana. We strongly advocate for ensuring there is adequate resourcing to support individuals to retain their mana and self-worth through all assessment phases. Consideration should be given to supporting the individual through appropriate environments for the individual (not ones that are more convenient for mental health staff).
29. Given Aotearoa New Zealand’s diverse cultural background, there is a need to ensure the new mental health legislation considers cultural background and communication. Given the possible implications

on liberties of mental health legislation, the new legislation must ensure that services are provided in a culturally appropriate manner and there are appropriate provisions to support the individual, especially when utilising the rights and recovery-based approach we advocate for. There can be problems that arise with using translators in services such as mental health. These include miscommunication between the practitioner and service user; language or dialect inexperience of the translator; limited understanding of health literacy of the translator or service user; lengthy appointment times; or being uncomfortable, shameful, or embarrassed about sharing personal and sensitive information with an unknown individual (Al Shamsi et al., 2020; Kan et al., 2020). In order to ensure appropriate care, the mental health legislation must ensure language barriers are removed (Ali & Johnson, 2017). The use of interpreters is likely to be unavoidable. As such, we recommend that interpreters undergo specific training relating to interpreting with mental health service users. Furthermore, if an individual requires interpretation to engage with mental health services, it is recommended systems are developed to enable there to be a small team of dedicated interpreters consistently used.

THE VALUE OF SOCIAL WORK IN MENTAL HEALTH SERVICES

30. An increased use of social work will add significant value to Aotearoa New Zealand’s mental health system and will address some of the concerns identified within the consultation document.
31. Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Social workers promote social change and empowerment by adhering to the principles of social justice, human rights, collective responsibility, and respect for diversity. Social workers establish caring and respectful relationships with authenticity, intention, and purpose, to strengthen, restore and uphold the safety and wellbeing of those they work with. They identify strengths, needs and support networks to prioritise goals that will enhance social connectedness, and assist in addressing life challenges and major events.²
32. A recovery and rights-based approach to mental health places a greater emphasis on holistic wellbeing and the social determinants of mental health. We strongly support a shift to ‘Big Community’ found in the Wellbeing Manifesto in He Ara Oranga (Government Enquiry into Mental Health and Addiction, 2018, pp. 36-37). To achieve this, there needs to be other professional disciplines (such as social work) prioritised within the mental health system and legislation to ensure a holistic, social approach is being taken.

Table 1: Wellbeing Manifesto

Big Psychiatry	Big Community
Mental disorder is viewed primarily as a health deficit.	Mental distress is viewed as a recoverable social, psychological, spiritual or health disruption.
A mental health system with a health entry point led by medicine.	A wellbeing system with multiple entry points led by multiple sectors and communities.
Most resources are used for psychiatric treatments, clinics and hospitals.	Resources are used for a broad menu of comprehensive community-based responses.
Employs predominantly medical and allied health professionals.	Employs a mix of peer, cultural and traditional professional workforces.
Has a legacy of paternalism and human rights breaches.	Has a commitment to partnerships at all levels and to human rights.

² Adapted from the Global Definition of Social Work - International Federation of Social Workers and International Association of Schools of Social Work and the Aotearoa New Zealand General Social Work Scope of Practice (see Appendix A).

Focused on compliance, symptom reduction and short-term risk management.	Focused on equity of access, building strengths and improving long term life and health outcomes.
Responds to people at risk with coercion and locked environments.	Responds to people at risk with compassion and intensive support.
A colonising medical system that excludes other world views.	A bicultural system that embraces many world views.

33. In order to achieve the shift in mental health practices outlined in the Wellbeing Manifesto, there must be a change in the professional discipline makeup of the system. Currently, mental health services in Aotearoa New Zealand are largely driven by the medical professions (typically psychiatry and nursing), with over 50% of staff employed in DHB mental health services being from these professions (Te Pou o te Whakaaro Nui, 2019). The current Mental Health Act places decision-making responsibility predominantly with health practitioners (as defined under the Health Practitioners Competence Assurance Act 2003). Social workers are not specifically mentioned within the Mental Health Act, yet often work within mental health services.³
34. As a result, the mental health system currently prioritises and favours medical-based approaches to care through the predominance of the psychiatry and nursing professions. Whilst psychiatry and nursing are important professions, it is our view there must be an intentional shift in the professional composition of the system. The approach that we propose requires a prioritisation of supported decision-making and ensuring a holistic, supportive approach is taken. Furthermore, the recommended requirement for consideration of the impact of social factors is a significant shift. It is our view that this approach is best undertaken in partnership between the professions of social work and psychiatry/nursing. This will allow the differing professional perspectives to be considered and to ensure individuals involved with the mental health system receive holistic care.
35. We agree with the discussion document the inequalities and inequities found within the health system (including the mental health system) are due to a range of factors, largely of socioeconomic and cultural in nature. There is a need for the adoption of a social model of mental health and disability within the system. Social workers have this expertise, along with an understanding of human rights and complex social issues. This makes social work an ideal profession to work alongside psychiatry and nursing to achieve better outcomes for those involved with the mental health system. Evidence from Aotearoa New Zealand and internationally demonstrates social work can strengthen mental health treatment and care (Ali et al., 2021; Boland, et al., 2021; Mignon, 2019; Stone et al., 2021) through using holistic approaches to wellbeing and care and drawing on indigenous approaches.

CONCLUSION

36. ANZASW fully supports the repeal and replacement of Aotearoa New Zealand’s mental health legislation. We have shown the legislation must be based on Te Tiriti o Waitangi and suggest further specific engagement with Māori should occur to consider how the mental health system can be designed to work effectively for them.
37. We advocate for a rights and recovery approach to the mental health system. Our suggested approach will utilise processes such as supported decision-making and addressing the social barriers that contribute to mental ill-health. This approach will require a significant investment in and re-thinking of the formation of the current system.

³ Social workers are registered under the Social Workers Registration Act 2003 and are not considered health practitioners under the Health Practitioners Competence Assurance Act 2003. However, social workers often work within health settings, and many would consider themselves to be health practitioners.

38. In our submission, compulsory treatment must only be used in the most extreme cases where there are no other alternatives to ensure safety where there is a significant risk of significant harm. We recommend ensuring the legislative threshold is carefully worded to ensure this threshold is clear and understood.
39. The shift in approach to mental health care in Aotearoa New Zealand will require a significant change in the approach of the system and a move away from the current medical model. We view social work as being able to add a lot of strength to the system. Social workers are trained in issues of human rights and operate from a social, ecological perspective. There is a strong alignment between social work and the proposed approach outlined in this document. As such, we recommend social workers are the profession that must make applications under the mental health legislation, with the accompanying evidence of psychiatrists.

ABOUT ANZASW

The Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional association for social work in Aotearoa New Zealand. We have around 3,800 members who work throughout the community in both statutory social work and community social work settings. We advocate on behalf of members for social change and justice.

Social work in Aotearoa New Zealand

Social workers in Aotearoa are required to be registered with the Social Workers Registration Board. Social workers are registered under the Social Workers Registration Act 2003 and are not included in the Health Practitioners Competence Assurance Act 2003.

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Appendix A: Social Work Practice Statement⁴

Social work is a relationship-based profession and an academic discipline that incorporates analyses of current and historical influences including ecological, social, political, economic, spiritual, and psychological factors.

Social workers promote social change and empowerment by adhering to the principles of social justice, human rights, collective responsibility, and respect for diversity.

Social workers establish caring and respectful relationships with authenticity, intention, and purpose, to strengthen, restore and uphold the safety and wellbeing of those they work with. Social workers identify strengths, needs and support networks to prioritise goals that will enhance social connectedness, and assist in addressing life challenges and major events.

Social workers use a range of indigenous and social work theories, methods and techniques drawn from a recognised social work qualification, training, and experience. Their practice is based on Te Tiriti o Waitangi, the International Federation of Social Workers/International Association of Schools of Social Work Joint Global Definition of Social Work and Global Social Work Statement of Ethical Principles, the Aotearoa New Zealand Social Workers Association's Code of Ethics and the Social Workers Registration Board's Code of Conduct and Core Competence Standards.

Critically reflective supervision and continuing professional development are ongoing requirements of social work practice.

Social workers apply their knowledge and expertise in a variety of ways and roles at micro, meso and macro levels. This includes direct work with people and whānau, therapeutic social work, community-led development, consultancy, research, education, supervision, facilitation, advocacy, management, policy development and leadership.

⁴ Taken from the Aotearoa New Zealand Social Work General Scope of Practice. Retrieved from <https://swrb.govt.nz/practice/scope-of-practice/>