

Whakamōhiotanga whānui | Overall summary

In this report, we focus on compulsory community treatment orders (CCTOs) made under section 29 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act). CCTOs permit clinicians to compel people (tāngata whaiora) who are living in the community to be treated, typically with medication, without their consent. For the year 2020/21, 6,817 people were under CCTOs. This equates to 90 people under CCTOs per 100,000 in the population. Over the last five years, the courts consistently granted 88–89 per cent of the applications clinicians made for CCTOs. This means that almost 90 per cent of clinicians' applications progress to CCTOs.

The purpose of this report is to shine a light on the use of CCTOs in practice, by amplifying the voices of those with experience of compulsory treatment in the community. We are interested in understanding the impact of current practices specifically related to CCTO applications made and orders granted. Our focus is on the clinical review (application) and the court hearing (outcome) under the Mental Health Act.

In line with our legislative function, we intentionally focus on tāngata whaiora perceptions of CCTO processes and practices. We identify the clinical review and the court hearing as formal substitute decision-making processes under the Mental Health Act. These processes translate to CCTO applications and outcomes that Manatū Hauora—Ministry of Health (Manatū Hauora) reports publicly. These events take place daily in Aotearoa New Zealand across a range of service contexts. The perceptions and experiences of mental health and legal professionals with formal roles under the current Mental Health Act are also important for understanding what influences the use of CCTOs in practice; however, these voices are not the focus of this report.

We heard from people with lived experience, including Māori, tāngata whaiora, whānau, and family, about the use of CCTOs and the involvement of these people in clinical reviews and court hearings. First, we highlight some of the ways tāngata whaiora, whānau, and family spoke of being physically excluded from review and hearing processes. A second theme calls out ways that these decision-making events silence or override their perspectives. The examples of exclusion and marginalisation illustrate just how much some practices need to change before tāngata whaiora can be leading decisions on their own care and treatment, with support if needed. A third theme focuses on what we heard can be done now to improve practices under the current Mental Health Act, to protect mana and uphold rights to the greatest extent

possible, in advance of the new law embedding Te Tiriti o Waitangi and international human rights. A fourth theme highlights broader negative experiences of CCTO use.

Consistent with best practice under the Mental Health Act, clinical reviews and court hearings are opportunities for tāngata whaiora to make decisions for themselves with support if needed; rather than have decisions made for them. We want practice to be as consistent as possible with our international human rights obligations. The change that needs to happen is for services and courts to implement cultural and other practices that ensure tāngata whaiora as well as whānau and family perspectives are heard and tāngata whaiora lead in their decision making.

What needs to change?

Replacing the law

- We want to see the new mental health law based on supported decision making, and embedding Te Tiriti o Waitangi and a Te Ao Māori worldview.

Practices that need to change now under the current Mental Health Act

- We want to see a reduction in the number of applications made and outcomes granted for CCTOs, and in the rate of CCTO use.
- We want to see a reduction in the inequitable use of CCTOs for Māori and Pacific peoples.
- We want to see services and courts implementing cultural and other practices that ensure their processes hear the perspectives of tāngata whaiora as well as of whānau and family, and tāngata whaiora lead in their decision making.

While our priority in this report is to amplify voices of lived experience, we are committed to working with all stakeholders to help forge a different pathway that honours Te Tiriti o Waitangi and respects the rights of tāngata whaiora Māori and other people with lived experience. That pathway will be built on approaches that are effective in improving experience of services and improving outcomes for all people in Aotearoa.