

21 June 2024

Te Aka Matua o te Ture | Law Commission

By email: huarahi.whakatau@lawcom.govt.nz

**He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke |
Review of Adult Decision-Making Capacity Law
Submission on Second Issues Paper 52**

Tēnā koe,

Thank you for the opportunity to submit on the above issues paper. In line with Te Hiringa Mahara's function to advocate in the collective interests of tāngata whaiora and their supporters, the focus of our submission is on our mental health and wellbeing legal frameworks that will strengthen tāngata whaiora (those seeking wellbeing or support) rights in practice.

We commend the clarity of description, breadth and depth, of the issues canvassed in the paper. It provides a valuable public resource to inform and guide conversations and action oriented to improve our legal system to support better and equitable mental health and wellbeing outcomes for people.

PPPR Act and overarching issues.

We acknowledge that this work on reforming, and transforming, the law governing adult decision-making capacity is part of an international shift in jurisdictions adopting the UN Disability Convention and implementing rights-based approaches in health and legal systems.¹ In Aotearoa New Zealand, this shift is underpinned by our obligations under Te Tiriti o Waitangi.

There are significant implications of this shift for mental health law. For instance, there are calls for action to support the implementation of alternatives to coercion in mental health care².

We appreciate the focus of this Paper is the PPPR Act and support the case presented for a new Act. At the same time, we consider other legislation governing rights in our mental health and wellbeing system are part of the shift identified in the Paper. We refer here to the

¹ World Health Organisation, Mental health, human rights and legislation: guidance and practice, 9 October 2023. www.who.int/publications/i/item/9789240080737 (accessed 6 March 2024).

² Herrman H, Allan J, Galderisi S, Javed A, Rodrigues M, The World Psychiatric Association Task Force on Implementing Alternatives to Coercion in Mental Health Care. Alternative to coercion in mental health care: WPA position statement and call to action. *World Psychiatry* 2022; 21(a): 159-60.

replacement the Mental Health (Compulsory Assessment and Treatment) Act 1992, and the review of the Health and Disability Commissioner Act 1994 and Code of Health and Disability Services Consumers Rights 1996.

For these reasons, we encourage the Commission expand on the overarching issues described in the Paper in terms of interaction between the above Acts, and other relevant law. We would like to see discussion of, and recommendations for, adopting a consistent principled approach to embed Human Rights (ch.3), Te Tiriti o Waitangi (Ch.4) and Tikanga (Ch.5) across these Acts.

In this way, the Commission can promote coherence and integrity of rights-based law in our mental health and wellbeing system. In our view, a coherent framework across relevant law will support agencies and communities to operationalise the Acts as intended, and consistently, to uphold tāngata whaiora rights in practice.

Key features of a new Act.

We are supportive of a new Act with provisions for its purpose, definitions for decision making capacity and decision-making support canvassed in the Paper. We would like to see the new Act make provision for legislated support roles to be involved in processes for adults with affected decision-making. Formal recognition of support roles, additional to conventional legal and clinical roles, would enable more meaningful participation of people who come under the new Act.

On the proposed role of courts in the new Act, we urge the Commission to consider the tāngata whaiora and whānau voices in our 2023 monitoring report *Lived Experiences of Compulsory Community Treatment Orders* (copy attached).

The report's themes are relevant to processes under the PPPRAct. We heard that tāngata whaiora and whānau feel excluded from clinical reviews and court hearings under the Mental Health Act. We also heard that clinical reviews and court hearings marginalise Te Ao Māori and lived experience perspectives. However, the report also shows cultural and clinical practices that need to improve at the intersection of services and courts.

Systemic improvements.

We support the idea of an 'independent oversight body' to fulfil key functions identified throughout the Paper, such as to administer a national repository for an EPOA register, to provide rights-based information to the public, and to support training of those with legislated roles under the new Act.

Overall, our submission supports law reform that ensures coherence across Acts that provide legal frameworks for agencies, institutions and services working in our mental health and wellbeing system. A provision for a review of the Act's implementation, for example after five years, would also enable opportunities for systemic improvement.

We hope our comments are helpful to developing your final recommendations and report in 2025. In the meantime, we would welcome the opportunity to meet with you to discuss this in person.

Nāku noa, nā



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Te Hiringa Mahara | Mental Health and Wellbeing Commission