

# Transforming our Mental Health Law

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New Zealand Council Of  
Christian Social Services

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Organisation Name:	New Zealand Council of Christian Social Services (NZCCSS)
Organisation description:	<p>The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on Transforming our Mental Health Law.</p> <p>NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches.</p> <p>Through this membership, NZCCSS represents over 250 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website <a href="http://www.nzccss.org.nz">www.nzccss.org.nz</a>.</p>

## Tirohanga Whānui | Overview

NZCCSS wishes to acknowledge the mahi across Government, NGO advocates, and people and their families and whānau with lived experience of mental illness, which sits behind this consultation document.

NZCCSS supports the repeal and replacement of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MHCAT Act). Given the Act contains powers which significantly impede on the liberty of people subject to a compulsory inpatient order or compulsory treatment in the community order, new legislation is urgently needed to reflect a wellbeing and recovery model of mental health, and to improve equity of care and treatment experienced by Māori and Pacific communities. We agree there is a need to move beyond a perception of people with mental illness as dangerous and criminals to a 'recovery approach to care and treatment', within a context of 'the least restrictive mental health supports'.

The MHCAT Act is targeted at those at the higher end of mental health distress. Although outside of the remits of this consultation, we agree with mental health advocates that there needs to be a significant increase to community-based mental health and addiction services to provide support before a crisis point is reached. Anecdotally, NZCCSS is aware of extensive waitlists for child, adolescent and adult mental health services. Members have consistently reported the Covid-19 pandemic has exacerbated mental health distress across our communities. People with mental health

needs, alongside their family and whānau need support at the time they need it, in a format which is culturally appropriate and located in their local community.

## Taunakitanga | Recommendations

### 1. Embedding Te Tiriti o Waitangi and Te Ao Māori

As indicated in data provided in the consultation document, Māori do not have equitable outcomes with non-Māori who are subject to the Act. This is yet another indicator of inherent racism within the fabric of our social structures.

We agree that this inequity is a breach of Te Tiriti o Waitangi and strongly support the redesign of mental health legislation to embed Te Tiriti and a Te Ao Māori perspective into models of care to support Māori wellbeing.

NZCCSS agrees the current Act primarily reflects a Pakeha worldview which is not applicable to Māori communities. As a society, Aotearoa New Zealand is increasingly seeing the value of a more holistic worldview built on connectedness and strong relationships. This approach has value across cultural groups.

NZCCSS supports the [‘Principles of Te Tiriti set out in Whakamaua: Māori Health Action Plan 2020-2025’](#) (Ministry of health 2020), and specifically:

- Tino rangatiratanga – providing for Māori self-determination,
- Equity – requiring equitable health outcomes.
- Active protection – staying informed on health outcomes and actions to address health equity
- Options - requiring adequate funding of Kaupapa Māori services
- Partnership – working with Maori to design, deliver and monitor Kaupapa Maori services.

**Recommendation 1: We support the incorporation of Te Tiriti o Waitangi and te ao Māori into new mental health legislation.**

### 2. Decision Making

We acknowledge the need for mental health legislation to find a balance between the safety of tangata whaiora, and their family, whānau, and wider community, and the rights of individuals set out under the NZ Bill of Rights Act 1990. When people who are unwell and in distress reach a point where they are unable to make informed decisions about their treatment, a trusted process is needed to support decision-making.

We support the inclusion in legislation of a supported-decision-process to assist a person when incapacitated to make decision about their treatment, including advance directives, nominated people, independent advocates. We agree it is an important part of a person’s ongoing wellbeing to have social agency over what happens in their lives. Therefore, it is critical going forward that people under the Act do not feel that they have completely lost control of their lives.

**Recommendation 2: We support the inclusion in legislation of a supported decision-making process.**

### 3. Voices of Tangata Whaiora

In any crafting of legislation, the voice of those most impacted must be not only taken into account but amplified and given precedence. This legislation and the subsequent enactment of it, must be consistently informed by the voices of tangata whaiora at all stages.

**Recommendation 3: We support the development of a strong mechanism to allow and privilege the voice of lived experience – tangata whaiora led design and delivery.**

#### **4. Tamariki and Taiohi**

It is critical to the recovery of children and young people that they are supported to understand what is happening during the assessment process and treatment and that their opinions are heard. We agree new mental health legislation must be consistent with the rights of the child set out in the United Nations Convention of the Rights of the Child and the Care of Children's Act 2004. Furthermore, we agree that legislation should include special considerations for tamariki and taiohi in regards to decision-making and informed consent.

NZCCSS supports consideration of separate legislation for children and young people. Childhood and adolescence are specific developmental stages which profoundly shape adulthood. An age appropriate wellness and recovery legal framework is therefore an important option to review alongside the drafting of new legislation. Provisions under the Act have previously been inappropriately applied to children and young people - seclusion is an example of an inappropriate intervention when applied to children and young people.

It is also concerning to read in the consultation document the gap in knowledge about how children and young people feel about their experience under the Act. This perspective is urgently needed and must be used to inform the new legislation. NZCCSS looks forward to tracking progress in this area.

**Recommendation 4: We urge consideration and development to meet the specific needs of tamariki and taiohi, and that in doing so they are consulted and heard.**

#### **5. Requirements for Cultural Assessments**

NZCCSS supports the inclusion in legislation of a requirement for a cultural assessment when a compulsory assessment or treatment process is started. We note the Guidelines to the (Mental Health Compulsory Assessment and Treatment) Act 1992 'encourages' the use of cultural assessments and examples of different cultural models of care'. However, this should be a requirement under Te Tiriti and human rights obligations. In addition, Aotearoa New Zealand represents a diverse population with different cultural needs.

Further, there needs to be consideration that culture is more than ethnicity. In order to provide appropriate cultural assessments these need to reflect spirituality, age, sexuality, gender, economic status and ability.

**Recommendation 5: We support the inclusion in legislation of a requirement for a cultural assessment at the point a compulsory assessment to treatment process commences.**

#### **6. Protecting and Monitoring People's Rights**

There are significant impacts on a person's liberty when placed under the Act and therefore appropriate safeguards need to be in place. NZCCSS supports a review of the criteria for discharge from the current Mental Health Act which as discussed in the consultation document currently provides no or limited provisions to discharge a person under the Act. The criteria require a person to be 'no longer mentally disordered' which is a breach to basic human rights and runs counter to a wellbeing and recovery model of care in a community setting.

The new legislation needs to ensure there are appropriate mechanisms to balance the rights of the individuals and public safety. When reviewing a decision on a person's need to be under a compulsory

order, the Court should have 'regard to all the circumstances of the case' as is required when making a compulsory treatment order. In addition, information from family and whānau need to be given weight alongside clinical information. This would act as a further safeguard to ensure the Court receives all of the information needed to make an informed-decisions. Moreover, as discussed in item 5, the voices of families and whānau must be heard and respected by medical and legal professions because, for the most part, they have the best insight into a person's mental capacity.

**Recommendation 6:**

**a) a review of the criteria for discharge to reflect a wellbeing and recovery model of care**

**b) when reviewing a compulsory order, the Court should have access to all information of relevance, including information from family and whānau so that an informed decision is made by the Court.**

**7. Seclusion**

NZCCSS agrees strongly with long-standing concerns about the use of seclusion in mental health settings.

We support the principles set out in the Mental Health Act Reform Cabinet paper (2019). In an adequately resourced mental health sector, with an appropriately trained workforce, adequate staffing levels and modern, fit for purpose buildings, more effective approaches to mental distress would be available to deescalated a situation without the need for seclusion.

**Recommendation 7: The removal of seclusion as an agreed practice**