May 2021

To the Health Select Committee.

Please find attached DPA’s submission on the Mental Health (Compulsory Assessment and Treatment) Amendment Bill.

## Disabled Persons Assembly NZ

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# Introducing Disabled Persons Assembly NZ

The Disabled Persons Assembly NZ (DPA) is a pan-impairment disabled person’s organisation that works to realise an equitable society, where all disabled people (of all impairment types and including women, Māori, Pasifika, young people) are able to direct their own lives. DPA works to improve social indicators for disabled people and for disabled people be recognised as valued members of society. DPA and its members work with the wider disability community, other DPOs, government agencies, service providers, international disability organisations, and the public by:

* telling our stories and identifying systemic barriers
* developing and advocating for solutions
* celebrating innovation and good practice

# The submission

While DPA welcomes The Mental Health (Compulsory Assessment and Treatment) Amendment Bill, we see it as only the first step to completely overhauling NZ’s mental health system.

DPA fully endorses Recommendation 34 of He Ara Oranga, Report of the Government Inquiry into Mental Health and Addiction (2018):

“**Repeal and replace the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) so that it reflects a human rights–based approach, promotes supported decision-making, aligns with the recovery and wellbeing model of mental health, and provides measures to minimise compulsory or coercive treatment”** [[1]](#endnote-1)

We also remind the Committee of the concluding observations of the United Nations Committee on the Rights of Persons with Disabilities on NZ’s first country report, paragraphs 30 to 32:

**30. The Committee recommends that the State party take all the immediate necessary legislative, administrative and judicial measures to ensure that no one is detained against their will in any medical facility on the basis of actual or perceived disability. The Committee also recommends that the State party ensure that all mental health services are provided on the basis of the free and informed consent of the person concerned, in accordance with the Convention. The Committee further recommends that the Mental Health (Compulsory Assessment and Treatment) Act 1992 be amended to comply with the Convention.**

**31. The Committee notes that the State party continues to allow the use of seclusion and restraints in psychiatric hospitals. Although there has been a decline in this practice, the situation is not satisfactory.**

**32. The Committee recommends that immediate steps be taken to eliminate the use of seclusion and restraints in medical facilities.** [[2]](#endnote-2)

DPA wishes to speak to this Submission.

# The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

The Articles of the UNCRPD most relevant to this submission are:

## ***Article 4.3:* Actively engage with organisations of disabled people**

## ***Article 14:* Liberty and security of person**

## ***Article 15:* Freedom from torture or cruel, inhuman or degrading treatment**

## ***Article 17:* Protecting the integrity of the person**

# Specific comments on the Bill

***Clause 5, which amends Section 9:***

DPA supports the provisions for a family member, or someone concerned with the welfare of the proposed patient, being able to be present by audio or visual link when the purpose of the assessment examination and the requirements of the notice given under section 9(2)(c) are explained to the proposed patient.

***Clause 8 inserts, new sections 34A to 34D:***

DPA notes the removal of indefinite compulsory treatment orders and their replacement with 12-monthly reviews of compulsory treatment orders, and again reminds the Select Committee, of Paragraph 30 of the UN Committee on the Rights of Persons with Disabilities’ Concluding Observations. We support the setting out of how a court must deal with such a review.

***Clause 9 inserts new section 53A, which provides for the transport of special patients for the purposes of Part 4 of the principal Act and for attendance at court or parole board hearings:***

DPA believes that the wording of this section is too ambiguous and could allow patients to be restricted in ways which are unnecessary.

We are pleased that a transport management plan, which includes details of restraint to be used, is legislated for. However, we believe that Section 53A (3( (B) is too vague:

**“any other use of force in respect of the patient that is reasonably necessary in the circumstances.”**

We believe that Section 53A (3) )A) is sufficient to protect both the patient and the public:

**“the restraint of a transported special patient that is the least restrictive option for both the safety of the patient and the public.”**

This is sufficient and much less open to interpretation than the open-ended:

**“any other use of force in respect of the patient that is reasonably necessary in the circumstances.”**

We are also concerned that guidance on this section of transporting such patients does not have to be produced until 12 months after the coming into force of this Section. This is far too long and could lead to unnecessary restraint and force being used for an entire year.

We believe that the guidance should be produced three months before this section comes into force to allow staff time to understand the new legislation.

We are pleased that the Bill allows for greater transparency and reporting on the use of compulsory treatment orders by Directors of Area Mental Health Services.

# Further reform of the Mental Health Act needed

Along with many others, DPA supports the full adoption of He Ara Oranga’s recommendation that the Act be repealed and replaced.  At a minimum, any new law should include:

* The elimination of seclusion and restraint within compulsory treatment orders.
* Better processes and systems for obtaining consent.
* A more holistic approach to treatment so that treatment is more inclusive of the person and their whānau.
* Supported decision making processes so that people can be involved in decisions about their own treatment and have their support people involved.
* Improved complaint processes around treatment and review of compulsory orders.
* More robust discharge processes that ensures the patient’s interests, ability to care for themselves, and support available in the community are central.
* Te Ao Māori is central to mental health law and is meaningful for tangata and whānau within the system.

1. <https://mentalhealth.inquiry.govt.nz/inquiry-report/he-ara-oranga/> [↑](#endnote-ref-1)
2. <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/NZL/CO/1&Lang=En>

   [↑](#endnote-ref-2)