Te Ao Māramatanga
New Zealand College of Mental Health Nurses Inc.
Partnership, Voice, Excellence in Mental Health Nursing

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Health Committee
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Tēnā koutou

Te Ao Māramatanga- New Zealand College of Mental Health Nurses submission on the Mental Health Bill

Thank you for the opportunity to provide feedback to the Health Select Committee on the Mental Health Bill which is about people, families and communities as well as kaimahi-workers employed to provide mental health services in Aotearoa- New Zealand. Te Ao Māramatanga provides this written submission and respectfully request a kanohi ki te kanohi (face to face) hui with the Health Select Committee.

Te Ao Māramatanga extends a mihi to tangata whaiora who may be subject to compulsory mental health during their life journey, along with their whānau – family and hapori – communities. As mental health nurses we walk beside you on this journey. Furthermore, we convey our deep concern about the estimated 11,000 tangata whaiora who are subject to compulsory mental health annually many of whom we know as nurses are Māori.

Te Ao Māramatanga acknowledges the significant loss of many lives from suspected suicide noting that in 2023-24 year 617 lives were lost, many of who were Māori tāne. We extend our aroha to all whānau and friends of those impacted by suicide.

Te Ao Māramatanga acknowledges the people who have acted on a call to action to review and repeal the current Mental Health Act.

Te Ao Māramatanga acknowledges nurses working with tangata whaiora and whānau in a range of settings inclusive of around 5000 nurses working in specialist mental and or addiction or disability services across the motu.

About Te Ao Māramatanga- New Zealand College of Mental Health Nurses

Te Ao Māramatanga- New Zealand College of Mental Health Nurses is the professional body and voice for Registered Nurses with specialist mental health knowledge and skills in New Zealand. The college was formed in 2004 and we recently celebrated our 20th anniversary. Our growing membership includes several nurses who have been awarded Fellowship or Whetū Kanapa status in recognition of their contribution to mental health nursing. Members include nurse practitioners, registered nurses, enrolled nurses, nurses who hold a mental health and addiction credential, retired nurses, and student nurses. We have nurses with expertise in a range of settings- clinical practice, education, research, workforce development, policy, primary health services, secondary services, district health boards, non-government organisations, cultural services and specialty areas including disability and addiction. Our members are spread in both urban and rural areas nationwide and link into local College branches. Our college includes an addiction nurses branch and a disability nurses branch.

The College Board brings a wealth of knowledge which we draw from to advance the care of people with mental health problems through the expertise and the professionalism of mental health nursing in New Zealand. Our governance structure is internationally recognised for its bi-cultural constitution and ways of working which includes a president and kaiwhakahaere and a Māori caucus that form part of our board.

As Mental Health Nurses we recognise the need for flexibility, adaptability, responsiveness and sensitivity and we can shape our practices to the changing needs of people, family/whānau and communities. The Bill offers opportunities for nurses to demonstrate this and create and lead the changes required.

In our submission we make comment on sections of the Mental Health Bill.

Te Ao Māramatanga respectfully request a kanohi ki te kanohi (face to face) hui with the Health Select Committee.

Te Tiriti o Waitangi

Te Ao Māramatanga notes that the Bill provides a much clearer requirement to consider Te Tiriti, including eliminating inequity, inclusion of advisors to advise on complaints and inquiries, inclusion of cultural expertise in the collaborative care team, care plan must include cultural considerations, membership of mental health review tribunal and forensic patient review tribunal. However we do think this can be strengthened further.

With the use of the Whakamaua Māori Health Plan 2020 -2025, pg. (15) we respectfully request that the select committee consider the comments noted in red

5a: section 3(b), that we are committed to achieving equitable health outcomes for Māori and the population of Aotearoa New Zealand

5b: section 6 that we ensure active protection which establishes a compulsory care principle that supports Whānaungatanga and recognises the importance of family and cultural ties:

5c: section 17, which provides for hui whaiora (well-being meetings) providing for Māori self-determination and mana motuhake among other things, tāngata whaiora to make decisions about their care.

5d: section 27 that we ensure active protection which provides that a patient is entitled to proper respect for their cultural, ethnic, and individual identity and their religious or cultural beliefs.

5e: section 40, acting to the fullest extent practicable to which we ensure active protection provides for the approval of advisers with expertise in matters involving tāngata whaiora Māori to advise on complaints and inquiries under this Act.

5f: section 42, cultural expertise that is embedded within the required provision of a rōpū whaiora (collaborative care team) for each patient that includes the expertise necessary to meet the needs of the patient, including cultural expertise.

5g: section 43, (a) and (b), which requires a care plan for each patient that includes a holistic assessment of the person, including cultural expertise in relation to the person, and non-pharmaceutical options for care.

Te Ao Māramatanga respectfully requests that the select committee reflects on how the Mental Health Bill pays attention to the WAI2575 Hauora report that endorsed five Te Tiriti o Waitangi principles

- Partnership / Relationship: Involves working together with iwi, hapū, whānanu and Māori communities to develop strategies for Māori heath gain and appropriate health and disability services.
- Options: Requires the Crown to provide for and properly resource kaupapa Māori health Services. Furthermore, the Crown is obliged to ensure that all health care Services are provided in a culturally appropriate way that recognises and supports the expression of hauora Māori models of care.
- Tino Rangatiratanga: Provides for Māori self-determination and mana motuhake in the design, delivery, and monitoring of health care.
- Active protection Requires the Crown to act, to the fullest extent practicable, to achieve equitable Health outcomes for Māori. This includes ensuring that it, its agents, and its Treaty partner are well-informed on the extent, and nature, of both Māori Health outcomes and efforts to achieve Māori health equity.
- Equity: Requires the Crown to commit to achieving equitable health outcomes for Māori

General policy statement

Te Ao Māramatanga- supports in part the intent to create a modern legislative framework that-

- *shifts compulsory mental health care towards an approach based on people's rights and recovery:*
- *enables responsive, needs-based care, including culturally appropriate care that addresses the need for compulsory care:*

- *supports the safety of individuals and others:*
- *supports people to make decisions about their mental health care and ensures that those who have decision-making capacity are not compelled to receive mental health care:*
- *minimises the use and duration of compulsory care, including minimising the need for people to re-enter compulsory care:*
- *includes effective safeguards and mechanisms to monitor the use and operation of legislation and ensure that human rights are respected*

Te Ao Māramatanga acknowledges that the Mental Health Bill is a pivotal step in the right direction towards an approach based on people's rights and recovery but this is only the beginning. In its current form, this Mental Health Bill does not provide a mechanism for reducing New Zealand's high use of community treatment orders (CTOs). Furthermore CTOs are one of the greatest contributors to inequities in the current legislation and are used 4.5 times more frequently with Māori than with non-Māori.

Te Ao Māramatanga requests that the Mental Health Bill be re-examined to consider an alternative such as the community care contract recommended by other submitters.

Te Ao Māramatanga advocates strongly that there are many more steps needed to ensure that a system wide approach is taken to ensuring resources and workers are in place to enable tangata whaiora and whānau to access and receive support. Options to receive Western and or Te Ao Māori approaches and interventions are critical to address compulsory care of Māori tangata whaiora. Hauora Māori models of care must be at the forefront of system change to reduce use of compulsory care in Aotearoa.

The ability for tangata whaiora to share their will and preferences and to feel heard and listened is fundamentally reliant on the quality of the relationships they have with people and with health professionals. Whilst the Mental Health Bill can legislate for this to occur to a certain extent further work in needed within Aotearoa society to enable authentic, caring and respectful relationships to be formed and sustained. Stigma and Discrimination continue to be barriers along with perceptions that people experiencing mental health problems are dangerous.

The impact of alcohol and other drugs on a person's wellbeing and mental health is often far reaching and can include admissions to acute mental health units, emergency departments. For some people this may result in incarceration. Further work is needed to ensure an across-sector- system and services have the capability and capacity to respond to tangata whaiora with co-existing mental health and addiction problems who from our experiences as nurses are often subject to compulsory care and seclusion.

Social determinants that impact on wellbeing such as housing, employment and access to free or affordable community health care continue to have a high impact on the people's journey through services.

Government Policy and resourcing is needed to ensure people experiencing problems with their mental health can access a range of healing and wellbeing services early and must ensure there are supports and services available for family and whānau.

90% of specialist mental health services are provided in the community and there is high demand. Access to 24 hour nursing care in an inpatient mental health unit is in main through involuntary admission. Reductions in respite services in the community compromise care close to home. This must be addressed to make the strides needed to reduce the use of compulsory care.

Purpose

Te Ao Māramatanga notes that the purpose of the Bill is to provide for compulsory mental health assessment and care in a manner that—

• promotes a person's decision-making capacity, including while the person is subject to compulsory care:

• improves equity in mental health outcomes among New Zealand's population groups by striving to eliminate mental health care disparities, in particular for Māori:

• protects people's rights under legislation:

• protects the safety and well-being of people who are subject to the legislation and all other New Zealanders.

The purpose statement "protects the safety and well-being of people who are subject to the legislation and all other New Zealanders" should be separated.

We propose that this could read:

-protects the safety and well-being of people who are subject to the legislation

The statement.... *all other New Zealanders* is stigmatizing and othering to people experiencing problems with their mental health. Suggest that if the intention is to protect the safety and wellbeing of all New Zealanders then this should be changed to:

- protect the safety and wellbeing of all New Zealanders inclusive of people experiencing mental distress.

Principles

Te Ao Māramatanga notes that there are a set of principles that underpin the Bill to guide decision making and support the purpose of the legislation. *The intent of the principles is that—*

• compulsory care should serve a therapeutic purpose: this includes to protect, promote, and improve a person's mental health:

• compulsory care should be applied in the least restrictive manner: this includes a preference for voluntary care options, ensuring that compulsory care is applied for no longer than necessary, and ensuring that support is available to reduce the need for compulsion:

• compulsory care should be supportive and responsive: this means seeking at all times to encourage the person to develop and exercise capacity and choice, and that care should reflect the needs of the person, be guided by their will and preferences, and recognise the person's ties to family, whānau, hapū, iwi, and family group. The

principles will apply to courts, tribunals, and persons performing or exercising functions, powers, and duties under the legislation

• compulsory care should serve as a therapeutic purpose that offers help to a person experiencing mental health problems in the least restrictive manner and only until the person is able to exercise capacity and choice.

Supported decision making, including family and whānau involvement

Te Ao Māramatanga supports the range of proposals related to supported decision making, including family and whānau involvement.

Te Ao Māramatanga is pleased to see proposed changes that strengthen the role of family, whānau, and other trusted people have in a person's care.

Te Ao Māramatanga is pleased to see the proposed introduction of arrangements for the use of hui whaiora (well-being meetings) and advocates that this practice could be embedded into services now. As could the use of Hui whaiora to consider and resolve issues, disputes, or complaints, as well as to support restorative practices following the use of coercive powers. Skilled and knowledgeable facilitators for Hui whaiora would be welcomed.

Compulsory care directives

Te Ao Māramatanga notes that the compulsory care directive envisaged in the Bill is NOT an advance directive. An advance directive should not be a directive for compulsory care and should not have to be written together with a mental health clinician. Right 7(5) of the Code of Health and Disability Services Consumers' Rights grants any legally competent individual the right to create an advance directive. Therefore we respectfully request the Select Committee to revise the use and intention of what is termed "the compulsory care directive" in the Bill.

Rights and complaints

Te Ao Māramatanga supports the updating of the existing set of rights for those subject to compulsory assessment and care to modernise the rights and clarify who must carry out duties. We note that the proposed updates regarding the processes for making a complaint to a district inspector in relation to a breach or an omission of rights or where compulsory care has not been provided in accordance with the legislation.

Te Ao Māramatanga advocates that least restrictive approaches to care are at the forefront of any review of processes. Enabling District Inspectors to rely on advice from advisers with expertise in matters involving tāngata whaiora Māori is proposed and the College advocates that should be supported to happen in practice now.

Compulsory care criteria

Te Ao Māramatanga partially supports the proposed criteria that must be satisfied in order for a person to be subject to compulsory care. The compulsory care criteria will be met if the person has seriously impaired mental health—

• that causes, or is likely to cause in the near future, in the absence of care, serious adverse effects; and

• that causes the person to lack capacity to make decisions about their own mental health care.

Te Ao Māramatanga notes that this criteria has two parts and the person must lack capacity to make decisions. The compulsory care criteria – much higher threshold and capacity based Training and education about lack of capacity – will be needed. Determining what this may look like when a person is under the influence of substances is an area that requires further thought in relation to any form of inpatient hospital care.

As nurses we are mindful that risk assessment and management is an inexact science and whilst many kaimahi- workforce may have skills and knowledge along with tools, procedures etc., predicting risk remains a real challenge. What we do know is that the strength of the relationship that a nurse can develop with tangata whaiora and their whānau matters. This takes time and also is dependent on the environment where people receive care.

Compulsory assessment and care – steps

Te Ao Māramatanga notes that the Bill sets out requirements for each step of the process by which an individual becomes subject to compulsory care, which involves—

- *an examination:*
- *a first assessment:*
- *a second assessment for a period of up to a maximum of 19 days, with formal reviews required no later than days 5, 12, and 19:*
- *mental health care orders, either inpatient or community, given by the court.*

At each assessment point, the decision maker (either a mental health practitioner or the person's responsible practitioner) will be required to have regard to the views of the person being assessed as well as those of their support network (eg, family and whānau).

Te Ao Māramatanga notes that the roles are mental health practitioner or the person's responsible practitioner and advocate that a process is in place to ensure people undertaking these roles are trained and have specialised in mental health.

Te Ao Māramatanga notes that the assessment process is different to current legislation. The Bill has removed the 8A part, making it much clearer that a person with concerns has to contact an authorised person who will investigate and then arrange an examination if required, the 8B is now an examination and then application if required, this is carried out by a mental health practitioner or clinical psychologist and there is then a first assessment. All parts of this process now refer to a mental health practitioner, including in the first assessment, therefore there is no requirement for a psychiatrist. Person is then under first assessment for 19 days, but must have a formal assessment that considers the compulsory care criteria at days 5, 12 and 19.
It is noted that a mental health practitioner is a medical practitioner, a nurse practitioner, a registered nurse practising in mental health or any other person or class or person appointed under section 149 (approved by the Director of Mental Health).

Te Ao Māramatanga advocates that mental health nursing is a specialty area practice and the definition should be changed to registered nurse who has specialised in mental health.

> Mental Health Nursing is a specialised branch of nursing practice that builds on the competencies expected of all nurses who practice in Aotearoa, New Zealand. It is a

> specialised expression of nursing which focuses on collaborative partnerships and meeting the needs of people with mental health issues, family/whānau and communities. It is an interpersonal process that embodies the concepts of caring and therapeutic relationship within a cultural context. Mental health nursing is holistic and considers the needs and strengths of the individual, family, group and community.
> *(Standards of Practice for Mental Health Nursing in Aotearoa New Zealand. 3rd Edition, 2012)*

Nurses are the largest clinical registered workforce in specialist mental health, addiction and disability services and we would play an integral role in the implementation of new mental health legislation. With additional resources Te Ao Māramatanga can offer assistance to provide assurance that a nurse has specialised in mental health and demonstrates that they practice in accordance with the Standards of Practice for Mental Health Nursing in Aotearoa New Zealand.

Te Ao Māramatanga is pleased to see that the responsible practitioner must ensure that an appropriately qualified and experienced Rōpū whaiora- collaborative care team is provided to a patient during compulsory care. We advise that this will require workforce development funding to embed in practices of care team members.

Care planning

Te Ao Māramatanga supports clarification about the care a person must receive when they are subject to the legislation. *It requires that all patients have a recorded care plan, which includes—*

> • *a full assessment of the person's circumstances and needs, such as their mental health, physical health and social needs, cultural considerations, and strengths:*
> • *the care that will be provided to the person to meet their needs:*
> • *planning for transition from inpatient to community care, and from compulsory to voluntary care, to better support the patient to exit compulsory care when they are ready or no longer meet the compulsory care criteria.*

Te Ao Māramatanga notes that care requires f*amily and whānau involvement where possible and appropriate, as well as having regard to the views of a wide range of experts in care planning, including clinical perspectives, perspectives of those with lived experience of mental distress, and cultural perspectives. Providing care that better meets people's needs during their recovery is intended to help minimise the need for and duration of compulsory care*

Te Ao Māramatanga advocates for a Māori cultural assessment to be completed and is integral to a comprehensive assessment of Māori tangata whaiora. The outcomes would inform kaimahi- staff korero with tangata whaiora and their whānau about a plan of care.

Te Ao Māramatanga advocates that every person receiving mental health, addiction or intellectual disability services must have a care plan that is regularly reviewed. This practice should be in place now and need not wait until new Mental Health legislation is passed. Consideration of advance directives would be part of planning care with the person and their family- whānau.

Reducing and eliminating use of *restrictive practices*

Te Ao Māramatanga notes that the Bill takes a balanced approach to reducing and eventually eliminating seclusion and other restrictive practices.

This approach recognises the trade-offs between the human rights implications and lack of therapeutic benefits with the need to ensure—

- *the safety of the person, staff, and others:*
    - *the readiness of the system, including sufficient workforce to implement the legislative requirements:*
    - *the avoidance of potential unintended consequences (for example, an increase in other inappropriate forms of restrictive practices).*

In addition to setting out when seclusion and force may be used, the Bill introduces a duty on services to use their best endeavours to eliminate seclusion and to minimise the use of force.

To support transparency, there are also reporting requirements on the use of those practices. The Bill requires that seclusion be used in accordance with regulatory guidelines. It also enables regulations to prohibit or restrict the use of seclusion

Te Ao Māramatanga continues to support and advocate for least restrictive practices. Attention to inpatient environments must be paid to enable space and activities to reduce distress.

Te Ao Māramatanga notes that the care of people who are using or withdrawing from alcohol or substances, and experiencing problems with their mental health continues to require attention in terms of tangata whaiora safety, community safety and staff safety.

Te Ao Māramatanga notes that this section is in line with the Guidelines for Reducing and Eliminating Seclusion and Restraint under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Wellington: Ministry of Health.

As mentioned earlier the impact of alcohol and other drugs on a person's wellbeing and mental health is often far reaching and can include admissions to acute mental health units, emergency departments. For some people this may result in incarceration. Further work is needed to ensure an across- sector- system and services have the capability and capacity to respond to tangata whaiora with co-existing mental health and addiction problems who from our experiences as nurses are often subject to compulsory care and seclusion.

Children and young people

Te Ao Māramatanga notes that the Bill provides for *additional requirements and protections that apply to children and young people, including—*

• ensuring wherever possible that children and young people are cared for by child and adolescent mental health services:

• ensuring that patients under the age of 18 are not given treatments intended to destroy any part of the brain or brain function and are not placed in seclusion:

• ensuring that patients under the age of 18 are not given electroconvulsive therapy unless in the case of an emergency: clarifying the role of parental and guardian consent in the context of compulsory care:

• ensuring that if a Mental Health Review Tribunal or the Forensic Patient Review Tribunal considers a matter concerning a patient under the age of 18, the membership of the tribunal includes at least 1 person with appropriate expertise in child and adolescent development. New elements in the Bill that relate to supported decision making and family and whānau involvement will also apply to children and young people

Te Ao Māramatanga supports this section and advocates for inclusion of Māori expertise in the review process of Māori children and young people- rangatahi.

Te Ao Māramatanga advocates for increases in services for children and young people- rangatahi and their whanau to minimise the use of compulsory care.

People in justice system

Te Ao Māramatanga notes that the Bill *carries over the processes for forensic patients from the Mental Health Act, including the requirement that they are to be cared for in the same way as other compulsory care patients. Forensic patient status is conferred on people subject to compulsory care who are detained in a hospital following an order under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the CPMIP Act) or transferred from prison. A person who is a forensic patient under the CPMIP Act is subject to this Bill.*
The criteria for being a forensic patient are set out in the CPMIP Act and therefore the patient does not need to be assessed against separate criteria under the Bill.

The Bill establishes the Forensic Patient Review Tribunal to— • determine applications for leave of absence for forensic patients:

- *review the condition of forensic patients:*
- *determine applications for change of legal status under the CPMIP Act.*

The Forensic Patient Review Tribunal will consider and balance important factors, such as the best mental health outcomes, public safety, and the voices of victims. Expert members will balance the desire for victims to inform decision makers as to the relevant safety considerations with the need for timely and healthcare-oriented decision making.

Te Ao Māramatanga respectfully requests that consideration is given to removing forensic mental health tangata whaiora from the Mental Health Bill and for the creation of a Bill that can outline the specific requirements related to care of forensic mental health whaiora many of who currently require secure care and require ministerial approval for leave. An alternative is to strengthen this in the Mental Health Bill.

Monitoring, oversight, and reporting

Te Ao Māramatanga notes that the Bill proposes to carry over existing roles ie: Director of Mental Health, Directors of Area Mental Health Services, authorised persons, who have a range of functions and powers to advise and provide assistance in relation to people requiring compulsory care, district inspectors and official visitors, a Mental Health Review Tribunal.

Te Ao Māramatanga advocates for a process to be in place to provide assurance the people fulfilling these roles have a sound understanding about the intended purpose of a Mental Health Act. Furthermore they must demonstrate the ability to be culturally responsive to

Māori. Māori specific roles requires further exploration to address and monitor compulsory care of Māori. This action need not wait until a new mental health act.

The impact of the carry-over of existing roles and the proposed new roles requires further consideration and a robust implementation plan to ensure they work in unison to enact any new legislation. Inclusion of people with lived experience and whanau in the section process of people to fulfil these roles should be considered.

Te Ao Māramatanga would expect to see that administration resourcing is provided to carry out the required monitoring, oversight, and reporting.

Documentation

Te Ao Māramatanga is mindful that the requirements of the existing Mental Health Act, and the extensions to that in this Bill require a considerable amount of documentation and recording of the legal status, treatment plans, etc. The Bill should at the least, require the Ministry of Health to establish an electronic means of record keeping for all legal requirements under that Bill, and ensure that includes the ability of clinical staff to access the current legal status or people who present to their unit.

Existing documentation of treatment plans etc is onerous, and often not fit for purposes prescribed as well as complain investigation and resolution, quality assurance and audit. This is largely due to the age and ineffectiveness of easing Electronic Health Record software across the motu. Requiring an improvement through the Bill will not work, and the issue is drawn to the attention of the legislators considering the Bill.

Closing remarks

In closing we thank you for taking time to read and consider our submission and we look forward to meeting with the Select Committee.

Should you have any questions, please do not hesitate to contact our Operations Manager directly at admin@nzcmhn.org.nz.

Ngā mihi nui
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