December 2024

**To Parliamentary Health Select Committee**

Please find attached our submission on the Mental Health Bill 2024

For any further inquiries, please contact:

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# Introducing Disabled Persons Assembly NZ

**We work on systemic change for the equity of disabled people**

Disabled Persons Assembly NZ (DPA) is a not-for-profit pan-impairment Disabled People’s Organisation run by and for disabled people.

**We recognise:**

* Māori as Tangata Whenua and [Te Tiriti o Waitangi](https://www.archives.govt.nz/discover-our-stories/the-treaty-of-waitangi) as the founding document of Aotearoa New Zealand;
* disabled people as experts on their own lives;
* the [Social Model of Disability](https://www.odi.govt.nz/guidance-and-resources/guidance-for-policy-makes/) as the guiding principle for interpreting disability and impairment;
* the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) as the basis for disabled people’s relationship with the State;
* the [New Zealand Disability Strategy](https://www.odi.govt.nz/nz-disability-strategy/) as Government agencies’ guide on disability issues; and
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/), [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan), and [Faiva Ora: National Pasifika Disability Disability Plan](https://www.moh.govt.nz/notebook/nbbooks.nsf/0/5E544A3A23BEAECDCC2580FE007F7518/%24file/faiva-ora-2016-2021-national-pasifika-disability-plan-feb17.pdf) as avenues to disabled people gaining greater choice and control over their lives and supports.

**We drive systemic change through:**

**Rangatiratanga / Leadership**: reflecting the collective voice of disabled people, locally, nationally and internationally.

**Pārongo me te tohutohu / Information and advice**: informing and advising on policies impacting on the lives of disabled people.

**Kōkiri / Advocacy**: supporting disabled people to have a voice, including a collective voice, in society.

**Aroturuki / Monitoring**: monitoring and giving feedback on existing laws, policies and practices about and relevant to disabled people.

## United Nations Convention on the Rights of Persons with Disabilities

DPA was influential in creating the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),[[1]](#footnote-2) a foundational document for disabled people which New Zealand has signed and ratified, confirming that disabled people must have the same human rights as everyone else. All state bodies in New Zealand, including local and regional government, have a responsibility to uphold the principles and articles of this convention.

The following UNCRPD articles are particularly relevant to this submission:

* **Article 8 – Awareness raising**
* **Article 9 – Accessibility**
* **Article 12 – Equal Recognition before the Law**
* **Article 14 – Liberty and Security of the Person**
* **Article 15 – Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment**
* **Article 17 – Protecting the Integrity of the Person**
* **Article 19 – Living Independently and Being Included in the Community**
* **Article 22 – Respect for privacy**
* **Article 25 – Health**
* **Article 28 – Adequate standard of living and social protection**

## New Zealand Disability Strategy 2016-2026

Since ratifying the UNCRPD, the New Zealand Government has established a Disability Strategy[[2]](#footnote-3) to guide the work of government agencies on disability issues. The vision is that New Zealand be a non-disabling society, where disabled people have equal opportunity to achieve their goals and aspirations, and that all of New Zealand works together to make this happen. It identifies eight outcome areas contributing to achieving this vision.

The following outcomes are particularly relevant to this submission:

* **Outcome 3 – Health and Wellbeing**
* **Outcome 4 – Rights Protection and Justice**
* **Outcome 5 – Accessibility**
* **Outcome 6 – Attitudes**
* **Outcome 7 – Choice and Control**
* **Outcome 8 – Leadership**

# The Submission

# DPA welcomes this opportunity to feedback to the Health Select Committee on the Mental Health Bill.

DPA supports the paradigm shift in this Bill represents as it moves the focus towards tangata whaiora (service users) who are part of the wider tāngata whaikaha community but also include people who live with physical, sensory, intellectual, and other disabilities,

However, we make recommendations about how the legislation can be changed to make it more compliant with New Zealand’s obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

We do have concerns about certain aspects of this legislation in that while it contains more of a human rights focus, this is undermined in parts by clauses which uphold the ability of mental health services to compulsorily treat people experiencing mental distress as a first option, rather than as an action of last resort.

**DPA supports the Bill being passed with amendments.**

## 1.) Tāngata whaiora perspective

Tāngata whaiora are aware of the stigma and prejudice that comes when living with mental distress. This is reflected in societal attitudes which manifest themselves in movie and media portrayals to the everyday language used in our communities.

The need for some people to hide their mental distress because society misunderstands or judges their condition based on misinformation or stereotypes creates barriers to the full inclusion of tangata whaiora in our society and to them accessing the healthcare they need, when they need it.

People also downplay other people’s mental distress to hide both their own discomfort and lack of knowledge. Alongside this stigma and prejudice come the systems that discriminate and exclude or are not resourced to fully support tāngata whaiora.

The numerous attitudinal and other barriers facing tangata whaiora in terms of discrimination and prejudice - including amongst some mental health professionals - need to be tackled to ensure that people with psychosocial disability/mental distress have their human rights fully upheld including when undergoing mental health treatment.

## 2.) Tāngata whaiora Māori me te Tiriti

In the recent Royal Commission of Inquiry into Abuse in State Care, a recurrent theme was the abuse and mistreatment of tamariki Māori which led to many becoming tāngata whaiora Māori.

Historically, this has occurred before at Parihaka with the abuse of young Māori women and girls affecting the mental health of iwi, hapū and whānau for generations.[[3]](#footnote-4) DPA welcomes the inclusion of a Treaty of Waitangi clause in the legislation in recognition of this.

**3.) Specific provisions**

We now turn to the specific provisions of the Bill which need further amendment.

**a.) Involuntary Treatment and Hospitalisation:**

The draft bill still allows for the involuntary hospitalisation and treatment of individuals with mental health conditions. If these clauses are retained as written, they will be in violation of UNCRPD Articles 12 (equal recognition before the law) and 14 (liberty and security).

Involuntary hospitalisation and treatment are seen as a violation of the right to legal capacity and the right to liberty. The bill needs to include stronger safeguards to ensure respect for the legal capacity of individuals, meaning that hospitalisation is only used as a last resort and with independent oversight provided.

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| **Recommendation 1:** that provisions emphasising autonomy and self-determination are strengthened meaning that involuntary treatment would only be permitted in the most exceptional cases, with appropriate judicial oversight and alternatives to hospitalisation, such as community-based care, being available. |

**b.) Lack of Safeguards Against Coercive Practices:**

DPA is extremely concerned about the potential use of coercive or restrictive practices (e.g., restraint, seclusion, forced medication) which are retained within the current bill. These practices amount to cruel, inhuman, or degrading treatment, violating Article 15 (freedom from torture or cruel, inhumane, or degrading treatment or punishment).

They are also damaging and counterproductive in terms of improving the mental health and wellbeing of tangata whaiora and exacerbate psychological distress in people who are subjected to these practises.

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| **Recommendation 2:** that the bill prohibits the use of restraint and seclusion as routine practices. |

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| **Recommendation 3:** that the bill is amended to incorporate strong safeguards against coercion, including mandatory review processes, independent advocacy, and clear guidelines for the use of any restrictive interventions, with the goal of minimizing their use. |

**c.) Involuntary Treatment in Institutions:**

This bill still promotes the involuntary treatment of individuals in institutional settings. Article 19 of the UNCRPD stresses the right of disabled people to live independently and be included in the community, and Article 25 emphasizes the right to health care without discrimination.

Institutionalisation often leads to isolation, discrimination, and neglect, and may not provide the most appropriate care. As the Royal Commission into Abuse in Care’s final report Whanaketia consistently noted the most serious abuses recorded against children and adults in care were carried out while many were subject to involuntary treatment orders, including at Lake Alice Hospital.[[4]](#footnote-5)

DPA urges government to turn its back on past practises, including the widespread use of institutionalisation and compulsory treatment orders.

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| **Recommendation 4:** Shift the focus of mental health services from institutional care to community-based services. This would support the right to live independently and to have access to mental health services that respect personal dignity and choice. |

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| **Recommendation 5:** integrate peer support, social inclusion programs, and alternative therapeutic approaches into the framework of mental health care. |

**d.) Legal Capacity and Decision-Making:**

The draft bill includes provisions related to the appointment of substitute decision-makers for individuals who are deemed incapable of making their own decisions about treatment. Under Article 12, disabled people must be afforded equal recognition before the law and the right to make decisions about their own lives, including health care decisions.

Clause 109 provides for the removal of certain patients or forensic patients with intellectual disabilities from hospital to an appropriate facility. In the IHC Data to Dignity report,[[5]](#footnote-6) people with intellectual disability may be vulnerable to criminal justice involvement not necessarily because they have higher offending risk factors, but because they may be more likely to get caught and are at risk of having a reduced capacity to understand the implications of their offending or to comprehend and effectively participate in the legal process. However, there are instances of people with intellectual disabilities being arbitrarily detained and their human rights breached.[[6]](#footnote-7)

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| **Recommendation 6:** Revise the provisions related to decision-making so that individuals with mental health conditions are supported in making decisions, rather than having decisions made for them. |

**e.) Safeguards against coercive practices:**

DPA is concerned about the wording contained within Section 38 on the rights of children and young people about ensuring that patients under the age of 18 are not given electroconvulsive therapy unless in the case of an emergency. Our concerns stem from the caveat “unless in case of an emergency” which we regard as insufficient in terms of preventing ECT from being given to under 18-year-olds.

The 2022/23 New Zealand Health Survey[[7]](#footnote-8) found that even though over a quarter of young people experience high mental health need, the percentage who can’t access support when they need it has risen by 77% meaning that their conditions may worsen to the point where much higher levels of intervention may be needed. The Mental Health Foundation (MHF) has said that one of the most serious interventions - ECT - should only be used in extreme cases when all other treatment options have been ruled out, or when there was informed consent by the patient.

We strongly recommend that the clause around providing ECT to children and young people only in emergency situations be further tightened up through the inclusion of criteria including that all other treatment options have been exhausted and that the full consent of the patient being treated is sought, even if they are under a compulsory treatment order.

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| **Recommendation 7:** that the clauses around administering ECT to children and young people be tightened up through the inclusion of strict criterion including that patient consent (including via supported decision making) is obtained before doing so. |

Clause 51 prohibits the use of a restricted treatment (any treatment intended to destroy any part of the brain or brain function, or any other treatment specified in regulations) except in specified circumstances.

We question whether these restrictions are strong enough given that it was only 10 years ago that doctors were authorising ECT therapy without gaining patient consent.[[8]](#footnote-9)

Although there are additional layers of protection afforded under the legislation, we are concerned about the use of coercive practices, especially if family/whānau are not aware of the impact of certain procedures on people.

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| **Recommendation 8:** that Clause 51 is amended to ensure that before undergoing any ECT procedure that the service user give their consent (including via supported decision making) before any treatment is administered. |

**f.) Mental Health Review Tribunal:**

DPA welcomes plans to co-opt disabled people to Mental Health Review Tribunals under Clause 166 if there is no disabled person on that tribunal to hear any case involving a disabled person whose case comes before it.

We also welcome the incorporation of Clause 171 which ensures that all tāngata whaiora, including those with physical, sensory, learning, and other disabilities, can access and participate in all review processes.

To ensure that this happens for any disabled people who are tangata whaiora, tribunal processes should incorporate accessible formats and processes within hearings such as, for example, the ability to organise New Zealand Sign Language interpreters for D/deaf people attendees if required.

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| **Recommendation 9:** that accessible formats are provided for tāngata whaiora, including those with physical, sensory, learning, and other disabilities, so they can access and participate in review tribunal processes. |

1. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> [↑](#footnote-ref-2)
2. <https://www.odi.govt.nz/nz-disability-strategy/> [↑](#footnote-ref-3)
3. <https://www.laidlaw.ac.nz/blog/2011/parihaka-day/> [↑](#footnote-ref-4)
4. <https://www.abuseincare.org.nz/reports/whanaketia> [↑](#footnote-ref-5)
5. <https://www.ihc.org.nz/publications/from-data-to-dignity-health-and-wellbeing-indicators-for-new-zealanders-with-intellectual-disability> [↑](#footnote-ref-6)
6. <https://newsroom.co.nz/2024/08/26/held-for-18-years-without-charge/> [↑](#footnote-ref-7)
7. <https://mentalhealth.org.nz/news/post/new-survey-shows-youth-mental-health-rates-skyrocketing> [↑](#footnote-ref-8)
8. <https://www.rnz.co.nz/news/national/232193/ect-without-consent-branded-human-rights-breach> [↑](#footnote-ref-9)