

Pae Ora (Healthy Futures) (Improving Mental Health Outcomes) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

27 March 2024

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Pae Ora (Healthy Futures) (Improving Mental Health Outcomes) Amendment Bill (**Bill**).
- 1.2 This Bill seeks to amend the Pae Ora (Healthy Futures) Act 2022 (**Principal Act**) to better enable the long-term planning and delivery that is required to improve mental health and addiction outcomes.¹
- 1.3 This submission, which has been prepared with input from the Law Society’s Health and Disability Law Committee,² makes recommendations to improve the clarity of the Bill. It does not seek to comment on the underlying policy objective of the Bill, or on the suitable options for achieving that objective.
- 1.4 The Law Society does not wish to be heard in relation to this submission.

2 Changes to the definition of “health entity”

- 2.1 Clause 4(1) of the Bill amends the meaning of “health entity” in the Principal Act, and makes the Mental Health and Wellbeing Commission (**Commission**) a health entity for the purposes of the Principal Act. As a result, this amendment imposes various new obligations on the Commission under the Principal Act – these include:
- (a) Giving effect to the Government Policy Statement on Health issued by the Minister (a requirement under section 39 of the Principal Act);
 - (b) Having regard to all relevant health strategies when exercising its powers or performing its functions or duties (a requirement under section 49);
 - (c) Acting in accordance with the code developed by the Health Quality and Safety Commission when engaging with consumers and whānau (as required under section 60); and
 - (d) Meeting the other requirements set out in sections 96-99.
- 2.2 The Commission is a Crown entity established under the Mental Health and Wellbeing Commission Act 2020 (**MHWC Act**),³ and its current legislative functions and obligations are set out in sections 10-12 of that Act. There is presently no expectation on the Commission to meet any requirements under the Principal Act (as it is not currently classed as a “health entity”).
- 2.3 Against this background, and in the absence of any policy documents relating to this Bill, it is unclear whether the intention of the Bill is to require the Commission to meet these additional obligations under the Principal Act, and if so, whether:

¹ Explanatory Note of the Bill.

² See the Law Society’s website for more information about this Committee:
<https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/health-and-disability-law-committee/>.

³ MHWC Act, s 7.

- (a) These new obligations would impact the Commission’s ability to “act independently in performing its statutory functions and duties, and exercising its statutory powers”;⁴
 - (b) Consequential amendments would have to be made to the MHWC Act (for example, as a result of any new obligations imposed on the Commission under the Principal Act); and
 - (c) Transitional provisions would be needed to delay the application of certain provisions in the Principal Act to the Commission (in order to give the Commission more time to prepare to fulfil any new obligations under the Principal Act).
- 2.4 We recommend the select committee consult the Commission, and clarify these matters if the Bill is to proceed.⁵
- 2.5 We also note the Minister is required to review and report on the operation and the effectiveness of the Commission after a certain period of time.⁶ The findings of that review may also inform how the policy objectives of this Bill can be best met.
- ### 3 References to “wellbeing” and “addiction”
- 3.1 The Bill contains various references to the phrases “mental health and wellbeing” and “mental health and addiction” – for example:
- (a) The Explanatory Note states the Bill seeks to “better enable the long-term planning and delivery that is required to improve **mental health and addiction** outcomes”;
 - (b) The Explanatory Note also states the Principal Act does not adequately provide for a **mental health and wellbeing** approach;
 - (c) Clauses 5 and 7 requires the Minister to determine a **Mental Health and Wellbeing** Strategy;
 - (d) Clause 7 further states that:
 - (i) the purpose of the strategy is to provide a framework to guide health entities for the long-term improvement of **mental health and addiction** outcomes; and
 - (ii) the strategy must contain certain information relating to **mental health and addiction** outcomes.
- 3.2 The term “wellbeing” may have a much broader meaning than “addiction”, and it could embody a range of matters unrelated to addiction. As a result, parts of the Bill could have

⁴ MHWC Act, s 11(4).

⁵ We understand the Commission supports the introduction of this Bill as a Government Bill, but does not support the addition of the Commission to the list of health entities in the Principal Act (see Te Hiringa Mahara Mental Health and Wellbeing Commission *Briefing to Incoming Ministers Minister of Health and Minister for Mental Health* (November 2023) at [44]).

⁶ MHWC Act, s 17 (which requires the Minister to do so after the expiry of 5 years from the commencement of the MHWC Act).

a wide or narrow application, depending on whether the wording includes “mental health and wellbeing” (which has a broader scope), or “mental health and addiction” (which has a narrower scope). The use of both of these phrases throughout the Bill could give rise to confusion about the overall scope and the purpose of the Bill.

3.3 We therefore invite the select committee to consider:

- (a) If it would be more appropriate to consistently use only one of these phrases in the Bill; and
- (b) If so, which phrase would be more appropriate for the fulfilling the purpose and intention of the Bill.⁷

3.4 The use of more clear and consistent language would promote the rule of law,⁸ and help ensure the provisions of the Bill are consistent with the underlying purpose and policy objective of the Bill.⁹

4 Commencement date of new section 46A

4.1 Schedule 1 of the Principal Act clarifies that the requirements under sections 41 to 49 of that Act do not take effect until 12 months after the Principal Act commences (i.e., they only take effect from 1 July 2023).¹⁰

4.2 Clause 8 of this Bill amends Schedule 1, and effectively provides that new section 46A will also not take effect until 1 July 2023 (noting this date has now passed). As a result, it is unclear whether new section 46A will:

- (a) Come into force on the day after the date on which the Bill receives the Royal assent (as provided in clause 2 of the Bill); or
- (b) Have retrospective effect, as if it had been in force since 1 July 2023 (as provided in Schedule 1 of the Principle Act).

4.3 If retrospective effect is in fact intended, this must be clearly stated in the legislation.¹¹

⁷ Some lawyers are of the view that the phrase ‘mental health and wellbeing’ (which has a broader scope) reflects a more contemporary approach to mental health issues and outcomes.

⁸ See Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at page 23.

⁹ Above n 8 at page 15.

¹⁰ Section 2 of the Principal Act states that the Act commences on 1 July 2022.

¹¹ Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at page 58.

5 References to the Māori Health Authority

- 5.1 The Bill contains a couple of references to the Māori Health Authority, which will be disestablished when the Pae Ora (Disestablishment of Māori Health Authority) Amendment Act 2024 comes into force in June 2024.¹² We therefore suggest removing those references from the Bill.



Taryn Gudmanz
Vice-President

¹² See Pae Ora (Disestablishment of Māori Health Authority) Amendment Act, ss 2 & 43.