Committee Secretariat
Pae Ora Legislation Committee
Parliament Buildings
Wellington

9 December 2021

Mental Health and Wellbeing Commission Submission on the Pae Ora (Healthy Futures) Bill

Tēnā koe

1. The Mental Health and Wellbeing Commission (the Commission) is pleased to submit on the Pae Ora (Healthy Futures) Bill (the Bill), which replaces the New Zealand Public Health and Disability Act 2000 in its entirety.
2. The Commission would welcome the opportunity to present to the Committee on our submission, to support improved health and wellbeing outcomes, through the structural reform proposed in the Bill.
3. The Commission looks forward to collaborating with the Committee, and with the new agencies and to a strengthened national policy mandate within the Ministry. Our comments set out on the Bill address specific concerns that relate to the Commission's remit of improving mental health and wellbeing outcomes, improving mental health and addiction services, and advocating for marginalised and under-served communities.

General Comment

4. The Bill gives effect to the biggest structural change to our health system in more than twenty years. Overall, the Commission welcomes transformation to address the structural barriers to the health system achieving better outcomes. However, we are concerned that structural change alone will not meet the needs of those who are underserved or address persistent inequities that exist within the system. Therefore, this submission focuses on strengthening the draft Bill to ensure the roles and responsibilities within it lay a better foundation for improved health and wellbeing.
5. The broad areas of concern highlighted, which are directly relevant to the Commission's remit, functions, and our place in the health system are:
    a. The Bill could be strengthened further to reflect tino rangatiratanga and ensure equity of Māori representation in decision-making. This may be more likely to contribute to improved wellbeing outcomes for tangata whenua.

b. The issue of mental health is almost invisible within the Bill. To help strengthen the Bill we recommend a more explicit referencing of mental health will provide assurance to the public that the health system is adopting a more holistic and transformative approach to health in the broadest sense.

c. The Bill contains little on wider wellbeing outcomes or monitoring of cross-agency efforts. To support improvements to wellbeing there needs to be strong collaboration between health agencies and other agencies on the social, economic, commercial and wider environmental determinants of health.

d. The Bill calls for consultation with consumers and communities. However, we consider that improved outcomes for diverse populations and communities who experience inequitable health outcomes requires mandated representation in governance and decision-making.

6. This submission also includes some further procedural changes, which we consider would improve the Bill. These include disability health policy needing to be developed in conjunction with the new Ministry for Disabled People; a review of implementation of the Act should be incorporated into the Bill; and an amendment to allow the Mental Health and Wellbeing Commission to properly conduct its functions.

7. There are strengths in the draft Bill that we support, and we trust that when the Select Committee makes its recommendations, these good parts are not lost. In particular, we endorse the Bill's objectives and functions to improve equity of outcomes for Māori and whānau and for all New Zealanders. We endorse the work to lift outcomes for other priority populations, including Pacific People, and to provide for a more consistent and cohesive health system with a nationally led focus on public health.

Upholding Te Tiriti o Waitangi and supporting Māori wellbeing

8. We support the Government's approach to establish a new Māori Health Authority (MHA) that will progress meeting the Crown's obligations for Māori health under Te Tiriti o Waitangi and work to address the inter-generational impacts of colonisation, hurt and systemic discrimination within New Zealand's health system.

9. We welcome the draft Bill's explicit mention of Te Tiriti o Waitangi in the preliminary provisions and Government Policy Statement on Health (GPS). It is good to see this

flow through to some aspects of the rest of the Bill, including knowledge and expertise on the Health New Zealand (HNZ) and MHA boards, and the requirement that HNZ and the MHA jointly develop plans. Amongst potential changes made to the Bill, the Committee should ensure these are retained.

10. However, the Bill currently waters down responsibility to uphold Te Tiriti o Waitangi at each level below the preliminary provisions. Partnership requires sharing power and responsibility – the Bill needs to reflect this and seek improved outcomes through services designed and provided for Māori, by Māori. We have concerns that the Bill provides for the transfer of responsibility for turning around Māori health outcomes without sufficient power or resource to achieve such an ambitious task. The deficit of poor health outcomes borne by Māori has been built up over 180 years.

11. We recognise the assumptions laid out in the Regulatory Impact Statement for the Bill, particularly that the MHA cannot, on its own, represent the voice of Māori. Rangatiratanga resides with hapū and iwi. However, the draft Bill places responsibility and expectation on the MHA to deliver health outcomes for Māori. As drafted, there is a risk that the MHA will be held responsible for broader Māori health outcomes, including outcomes that will be gained (or lost) based on policies developed by the Ministry of Health or the Public Health Agency, and supports and services commissioned by HNZ. Supporting documentation, including the Regulatory Impact Statement, are clearer on the roles and responsibilities of the MHA than the Bill.

12. To reflect both Te Tiriti o Waitangi partnership and the need to improve outcomes for all, HNZ and the MHA should have similar expectations and powers. In the draft Bill, they do not. As such, there is an imbalance in the partnership the Bill outlines in both form and function. Clauses relating to Crown responsibilities under Te Tiriti should, as much as practicable, be mirrored for both Boards to align responsibilities and commitment to health and wellbeing for Māori. Specifically:

    a. Requirements for HNZ to reflect and uphold Te Tiriti o Waitangi (at a governance level and in its functions), and to deliver measurable outcomes for Māori need to be strengthened. We **suggest alterations to clause 12(3)** to match 22(2). HNZ should also have *knowledge, experience, and expertise in relation to:*

i. *Te Tiriti o Waitangi (the Treaty of Waitangi), tikanga Māori, and mātauranga Māori; and*
ii. *kaupapa Māori services; and*
iii. *cultural safety and responsiveness of services*

b. Clause 20 of the Bill outlines how the MHA must have systems in place to engage, collaborate and report to Māori. We agree with this approach and **recommend a reciprocal clause be added** into HNZ's reporting functions.

c. We also **suggest moving clause 24 Part 2** to sit within Clause 19 for consistency of framing with 16 (1) (c) financial operations of HNZ.

13. The Bill gives the Minister powers to appoint and remove members of the MHA Board. We recognise that consultation with the Hauora Māori advisory committee is necessary to enact this (placing a higher requirement than on HNZ), but this power does not reflect partnership or upholding tino rangatiratanga. The Statistics Act 1975,15(2) provides an independence mechanism that could strengthen accountability and transparency by putting the onus on the Minister to explain why their decisions are not consistent with those of the Hauora Māori advisory committee if this is the case.

    a. We **suggest, at least, addition of 23(5)** *the Hauora Māori advisory committee, in relevant circumstances, may make public without comment the fact that the Minister of Health has removed a member of the MHA board, counter to that committee's advice.*

14. The Bill gives the Minister final say on conflicts between HNZ and MHA. As a result, when it comes to matters where Māori (represented through the MHA) are unable to find a compromise with HNZ, the Crown (as represented by the Minister) takes control over Māori decision-making. This does not reflect an expression of tino rangatiratanga or Te Tiriti o Waitangi partnership approach: it could represent a loss of sovereignty or Rangatira if the Crown continues to exert control over Māori decision-making. We note that previous advice on the health and disability system review included the MHA having veto powers, which are now gone. These powers may have been necessary to help balance power in the Crown-Māori partnership as described by the Bill.

    a. To better balance the powers laid out in the Bill, we **suggest adding 28(3)(a)** *the Minister must consult the Hauora Māori advisory committee, in the process of determining the dispute or process to resolve the dispute*.

b. Again, by facilitating transparency and accountability of the Minister's ultimate decision as arbitrator when no consensus can be found between the two commissioning bodies, we **suggest adding 28(3)(b)** *the MHA or HNZ, in such circumstances, may make public without comment the fact that the dispute arose, and has been settled by the Minister of Health, in accord with the views of the relevant other party, or for other undeclared reasons.* This would improve public accountability and ensure preliminary advice is robust and independent.

15. It is likely that most Māori will access most of their health services through HNZ commissioned providers. HNZ, and these providers, need to uphold Te Tiriti o Waitangi and work to improve equity – and this is currently lost amongst the range of principles, policy statements, strategies, and plans that will guide providers and commissioners.

    a. The Bill **should include more explicit expectations** on upholding Te Tiriti o Waitangi (at a governance level and in its functions at all levels) of HNZ and for co-commissioned services.

Improving mental health outcomes

16. **He Ara Oranga: Report of the Government Inquiry into mental health and addiction (He Ara Oranga)**, envisioned transformation of the mental health and addiction system. This vision should be enshrined within the Bill in such a way as to sustain the Government's commitment to transform the mental health and addiction system.

17. Change is already well underway, driven by the Government's cross-agency $1.9 billion package for mental wellbeing in Budget 2019 of which over $1.1 billion is invested in health initiatives. We have built the foundations for transformation and have initiated and progressed long-term programmes. This mahi, investment and momentum need to be protected and continued within the new health structure and legislation. Inclusion of mental health and wellbeing as an annex under the New Zealand Health Strategy is not enough.

18. Improving mental health and addiction outcomes will require long-term planning and delivery, and the Bill provides an opportunity to enable this. The Government has taken initial steps, through Kia Manawanui, to enact this; and has already passed legislation in other areas to support the wellbeing approach. Examples include the

Child Poverty Act 2018 and accompanying amendments to the Public Finance Act 1989. This Bill should also be adapted to incorporate the wellbeing approach more specifically in keeping with cross agency work and all of government objectives.

a. The Commission strongly advocates for the **addition of a mental health and wellbeing strategy** in the Bill, alongside the other strategies identified within Part 1 cl 4, Part 2 cl 10, Part 2 subpart 5, and elsewhere as required.

19. In preparation of the GPS, the Minister is required to engage with organisations that they consider appropriate. In preparing a health strategy they are required to consult with health entities or groups considered as reasonably likely to be affected. However, the Mental Health and Wellbeing Commission is not defined as either of these in the Bill. In developing the New Zealand Health Plan, HNZ and the MHA are only required to "take into account... the role of the Commission." Coupled with no specific inclusion of mental health and wellbeing at the strategic level, this weakens the Bill's commitment to supporting a mental health and wellbeing approach. Consistent with a long-term approach to improving mental health and the Commission's role to monitor and report on progress to broaden service access, specific reference to these functions would provide a level of assurance for the public that the focus on wellbeing is both holistic and enduring and will be actively monitored.

    a. The requirement for engagement with the Commission needs to be strengthened within the Bill. We **suggest the Mental Health and Wellbeing Commission, be identified as an entity** that should be consulted in the development of strategies identified in the Bill.

Addressing the wider determinants of wellbeing

20. We agree that an entire system ethos is critical to lift health outcomes and address disparities especially for marginalised groups. However, the Commission believes it will take more than structural reform, and more than a health system focus, to address persistent and longstanding inequities and improve health outcomes for all New Zealanders. The Bill needs to set out responsibilities and governance arrangements that will enhance cohesiveness and collaboration between the various parts of the health and wellbeing system.

21. We support the HNZ and MHA's objectives including an expectation that they will collaborate *with other social sector agencies to address the determinants of health*. However, no further mention of the social, economic, commercial and wider

environmental factors that affect health and wellbeing are included in the Bill. In cl37, the draft Bill states the Health Strategy's aim of *protecting, promoting, and improving people's health and wellbeing.* However, the detail that follows does not consider wellbeing, beyond a health system lens.

22. As outlined in our recently released report, *Te Rau Tira*[1], the interplay between health and wellbeing is complex, and affects different communities and individuals in different ways. To make meaningful improvement on both physical and mental health and wellbeing, the health system needs to work with other sectors on areas such as, but not limited to, housing, education, employment, justice, community development, and the arts. As recommended by the Commission in *Te Rau Tira*, improvement in wellbeing will require a plan that brings together all relevant government agencies with the private sector and communities – Kia Manawanui and the strategy identified in 18(a) above may be the appropriate avenues for this.

    a. We **suggest a further requirement be added at 37(3)(d):** [the Health Strategy must] *set out opportunities and priorities for the health system's contribution to wider population wellbeing, and for working with others to address the social, economic, commercial, and wider environmental determinants of health.*

    b. Monitoring of collective action across agencies is also needed. The Public Health Agency may be well placed to do this through improved surveillance activities.

23. We endorse the Bill's population health focus and the proposal to establish the Public Health Agency to develop long term policy approaches to public health and to strengthen the form and function of the Director of Public Health. However, the lack of detail on the expanded role of the Director of Public Health and the decision to place all public health commissioning functions within HNZ weakens the Public Health Agency's ability to take long-term cross government agency approaches to health and wellbeing. Such approaches are at the heart of addressing inequities in health, housing, poverty, and climate change impacts, but HNZ will be faced with competing regional interests and procurement processes that tend towards medium

[1] https://www.mhwc.govt.nz/assets/Te-Rau-Tira-Wellbeing-Outcomes-Report-2021/Te-Rau-Tira-Wellbeing-Outcomes-Report-2021-FINAL-WEB.pdf

term objectives. This is reinforced by the national health plan setting out a five-to-ten-year approach to services.

a. The Bill **could include the requirement for a long-term investment approach in public health** (10-20 years) across government, to address long term health conditions such as diabetes and obesity, climate-related disease impacts, and rheumatic fever rates and other respiratory conditions due to inferior quality housing.

24. Further, we note the MHA is responsible for health protection and prevention activities but not promotion. It seems inequitable that a commissioning body responsible for improvements to Māori health, commissioning of services for Māori, and performance of the system for Māori is not an equal party regarding health promotion functions and resources, even though the burdens of many social and environmental determinants of health are borne more heavily by Māori whānau.

a. The Commission **suggests a shared allocation and commissioning of public health functions** across HNZ, the MHA, and the Public Health Agency, as outlined in the Bill's commissioning Cabinet papers, be reintroduced to the Bill's text.

25. This Bill also provides an opportunity to better consider an intergenerational approach to health and wellbeing. Wales is recognised internationally for its approach to new legislation requiring new laws to be assessed for their inter-generational impacts. Including a requirement to assess the impacts of health funding and planning decisions upon mokopuna (grandchildren) would also strengthen the relationship with Māori and te taiao (environment).

a. We **propose that the relevant entities be required to consider and address inter-generational impacts** when the developing of all national and population-based health plans.

Improving equity through meaningful involvement of marginalised communities

26. The Bill introduces a set of required Health Strategies. Unlike, for example, people in prison or people with disabilities, (represented by Corrections and the new Ministry for Disabled People, respectively) we note that there are no government agencies to develop strategies to address the health needs of rainbow/takatāpui communities (noting that the current Bill does not reference gender or sex), or Asian

peoples (the largest growing demographic in Aotearoa, and one with diverse needs).

a. While a list of strategies cannot cover all communities in Aotearoa, the Commission **suggests including (in cl 29, after cl 40, and elsewhere as necessary) the need to develop a Rainbow Health Strategy and an Asian Health Strategy**.

27. Improving outcomes for marginalised communities will require a health system that has people and whānau at the centre. The Government's Wellbeing Budget was also clear that it sought a public service that puts people at the heart of how it organises services (i.e., the Public Service Act 2020).

28. We acknowledge that the Health Quality & Safety Commission is developing a Code of Consumer Participation and is well placed to do so given their established Partners in Care programme. The Bill needs to go further though, with consumer participation being strengthened to consumer partnership, and the diverse views of Aotearoa being present at the decision-making table.

a. **HNZ and MHA boards should reflect the diverse population of New Zealand, through clauses 12 and 22**, and elsewhere as appropriate. These clauses should include *[knowledge of, and experience and expertise in relation to] lived experience and the health needs of marginalised populations*.

Further changes that would improve the draft Bill

29. **Disabled people**: The announcement of the new Ministry for Disabled People and the introduction of the Accessibility for New Zealanders Bill recognise that disability issues are not just health issues. Accountabilities across the Ministry and Ministry for Disabled People need to be made clear including mental health services for disabled people.

a. The Bill should require **the Disability Health Strategy be developed in partnership with the Ministry for Disabled People and disabled people themselves**, and this requirement could be added to Part 2 cl 40 of the Bill.

30. **Review of the Act**: Given the changes in the Bill are so significant for health system delivery and the people working within that model (HNZ is expected to employ some 80,000 people), it should be assessed for efficacy and opportunities to improve its delivery. This was provided for in the Health Practitioners

Competence Assurance Act 2003 under Section 171 (and adapted below) to allow for review of what was significant health system change at that time and enables implementation issues to be addressed early on.

a. We **recommend the Bill includes a clause requiring a review of Operation of the Act after three or five years**:

   i. *As soon as practicable after the expiry of the period of 3 years beginning on the commencement of this section, the Director-General of Health must—*

      1. *review the operation of this Act since the date of the commencement of this section; and*
      2. *consider whether any amendments to this Act are necessary or desirable; and*
      3. *report the findings of the Director-General of Health to the Minister.*

   ii. *As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.*

31. **Ensuring the Bill does not impede the Mental Health and Wellbeing Commission**: It appears that, as the MHA is created as a new form of entity, it falls outside the remit described in the Mental Health and Wellbeing Commission Act 2020. Specifically, the Commission has the power to request information (under clause 14 of that Act) from relevant entities (HNZ is included in these, as it is in the Crown Entities Act Schedules, but the MHA is not). We are not aware of whether other, similar, gaps may be created in other legislation.

    a. The Committee should ask the Parliamentary Counsel Office to **ensure that an appropriate amendment to the Bill ensures that the Mental Health and Wellbeing Commission Act 2020 covers information requests made to the MHA**.

Ngā mihi

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