

# ‘Repeal, Replace & Remove the Mental Health Act’

By Te Kete Pounamu

## INTRODUCTION

Legal control of people committed under Mental Health Legislation for the purpose of assessment and treatment has been part of the mental health system in Aotearoa since the signing of Te Tiriti o Waitangi. Since the 1846 Lunatics Ordinance, mental health legislation has existed in Aotearoa with subsequent legislation motivating elements of mental health service delivery, including institutional care, and out of hospital alternatives to committed clients (O’Brien & Kidd, 2013). Remnants of early legislative provisions from archaic laws have persisted in the use of current mental health legislation (1992). A key concern has been the reach of compulsory psychiatric surveillance that has extended from acute mental health hospitals to the community and into people’s homes, which by consequence has emphasised a medical and legal dynamic that is currently involved in the mental health system in Aotearoa (O’Brien & Kidd, 2013).

In 2021, The Government of Aotearoa welcomed Public Consultation on the Repeal and Replace of the Mental Health Act. Māori Leaders with Lived Experiences gathered to provide their views to the Repeal and Replace of the Mental Health Act, and included the Removal of the Mental Health Act as a significant shift needed in Aotearoa. There are long standing frustrations and concerns among Māori Leaders, that their Voices are not heard albeit are they well understood in legislative matters. This document is a Call to Action by Māori Lived Experience Leaders to the Government – We want to see Change and Authentic Actions follow through on our following concerns.

## 1. MĀORI MENTAL HEALTH & WELLBEING INEQUITIES

We believe the impacts of colonisation, are sustained within societal and institutional structures and processes in Aotearoa which have perpetuated a life of ongoing inequities, and poor rates of health and social wellbeing. The Mental Health Act is one mechanism that contributes to Māori health inequities, and places our people in westernised clinical medical boxes that typically promote a one size fits all response. This approach does not take into account the person, our background, or our culture. We need a multi-level approach that will disrupt the issues across the mental health system whilst ensuring we can attach better access to supports across all levels for our whānau.

## 2. DISCRIMINATORY USE OF THE MENTAL HEALTH ACT

Māori experiences of Mental Health Legislation has consistently been discriminatory. This is evident by the high use of the Act in the coercion of our people to ensure we are compulsorily assessed, that we receive psychiatric treatment and take our medication.

We believe the Mental Health Act is heavily applied and misused amongst Māori, especially so when there are contrasts in views about psychiatric medications. Attempts to reduce the compulsory powers of the Mental Health Legislation by Government agencies has seen limited change and quite honestly these strategies have been ineffective for Māori – when we continue to see the evidence of our people experiencing the highest rates of restraint, seclusion and numbers of Māori routinely placed under the Mental Health Act for assessment and treatment

### **3. MENTAL HEALTH ACT REMOVES A PERSONS AUTONOMY**

Māori are commonly placed under the Mental Health Act for compulsory assessment and treatment in acute care and the community. We are treated against our will irrespective of whether we have the capacity to consent to treatment or not. This practice suggests that Māori with lived experience are incapable of possessing a degree of autonomy to determine what's important for ourselves and our overall wellbeing.

We recommend Tino Rangatiratanga is introduced into the Mental Health Act to address the restrictive approach by including the principle of self-direction with a strengths based approach. We believe this addition will improve active protection, enable options for partnership and equity as none of these aspects are included in the Mental Health Act.

### **4. MENTAL HEALTH ACT CONTRIBUTES TO STIGMA & DISCRIMINATION**

Once Māori have been compelled under the Mental Health Act, the mental health system and society discriminate us by treating us differently and reinforcing the stigma associated with mental illness upon us. Among many examples, the use of the Mental Health Act is implemented by others to facilitate a person's access to acute mental health care, and support. Yet once our wellbeing or recovery has improved, we are labelled by the history of being under the mental health act and still treated differently.

### **5. MENTAL HEALTH ACT DOES NOT GUARANTEE OPTIMUM SUPPORT OR CARE**

The Mental Health Act compels people for assessment and treatment within biomedical psychiatric facilities that do not guarantee access to holistic health and social support or care. The Mental Health Act reinforces treatment with no safeguards or preventative measures for our physical wellbeing nor addresses the additional health issues that arise for us from the treatments we are forced to take. There is no mechanism in the Mental Health Act for people to call out inappropriate treatment, over medication or culturally ineffective care or support.

We recommend the increase in Māori models of health amongst all health workforces and mental health services with an increase in Māori Workforces. Especially, Kaumatua and Kuia to be available across the continuum of care to ensure we have the ability for our holistic health to be addressed; for our culture to be respected, and to gain advice and support when needed.

## **6. MENTAL HEALTH ACT BREACHES TE TIRITI O WAITANGI & UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

Te Tiriti o Waitangi is the authoritative text over the English Version of the Treaty of Waitangi. The Government is responsible under Te Tiriti o Waitangi to ensure Māori have access to resources for our Wellbeing, in addition to enabling the creation and delivery of Māori specific and culturally safe mental health and addiction care for Māori.

Under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Māori have the right to traditional medicines, health practices and the right to access social and health services.

The Mental Health Act does not include The Treaty of Waitangi or Te Tiriti o Waitangi. We would recommend the introduction of UNDRIP and specifically adding in the Articles and Text of Te Tiriti o Waitangi into the Repeal of the Mental Health Act. These will raise the direct obligations of the Government and its mental health and addiction services to respond more effectively to the needs of Māori.

## **7. A MĀORI LEGAL WATCHDOG**

We recommend the formation of a Māori Legal Watchdog or Entity, so that when mental health legislation is governing assessment and treatment of Māori that there is a specific mechanism to request assertive review, with access to Māori experts to represent Māori interests as needed. It is felt that the Advocacy roles and components in the current Mental Health Act and within health services cannot easily object on behalf of Māori where a review is called because those Advocates are in principle still part of the same mental health system.

## **8. MĀORI AUDITING ENTITY**

We recommend the establishment of a Māori Auditing entity, that has the responsibility to audit the multiple levels and overall culture of District Health Board (DHB) mental health and addiction services. The entity would ensure that the DHB systems and workforces have the cultural capabilities to honour the responsibilities under Te Tiriti o Waitangi, whilst respecting Te Ao Māori, and the views and needs of Māori.

## **9. LEVERAGING MĀORI LEADERSHIP**

There are many Māori Health Champions and Māori Leaders in Aotearoa who could assist with the change that is needed with the Mental Health Act, and how mental health services apply it in Aotearoa. We believe Mental Health Legislation reinforces discriminatory stereotypes about Māori, which implies that we are either mentally unwell or dangerous. To eliminate stigma and discrimination amongst a group of people who are severely impacted by this legislation, needs Māori Lived Experienced Leaders whose insider worldviews of the legislation and its implications will give authentic insights and direction in the areas for change needed to the Act and the mental health system.

## **10. BUILD MĀORI LIVED EXPERIENCE & PEER SUPPORT WORKFORCES**

We are concerned with the number of international models of care, and overseas health professionals and approaches implemented in Aotearoa. Though, there has been investments in Kaupapa Māori workforces, programmes and services, these are often underfunded and need more resource to meet the major health and social needs in our communities.

We believe there is a need to purposefully invest in the recruitment, professional development and employment of Māori Lived Experience Workforces to ensure they are well trained and easily available across the whole continuum of health, social and community based services and communities. This would include Māori Peer Support Workforces in clinical services, in key decision making roles, with te reo me ona tikanga and deliberately located in positions to change the system.

## **11. REPLACE & REMOVE THE MENTAL HEALTH ACT WITH A WELLBEING FRAMEWORK**

There has been multiple harms experienced by Māori due to the enactment of the Mental Health Act. Instead of Compulsory Mental Health Legislation – we recommend its removal and in its place: A Wellbeing Framework that privileges our culture and language, that ensures we are respected and understood and facilitates individual and community healing and wellbeing.

The structure of our Māori Wellbeing Framework is founded upon Māori having equitable access to support, while ensuring we have the autonomy to determine and define what is, and who is important to our wellbeing. Given our strong connections to identity and culture, these will be key factors for promoting our mental health and well-being.

We need a Framework that has mana to shape and direct the resources available across the health and social system, that includes a strengths base with a whole of person and whole of whānau approach. This will enable what's best for Māori as a person and as part of their whānau, that sustains our 'mana' and rights, our voice and identity whilst ensuring our unique position as mana whenua.

We believe the discrimination associated with mental unwellness will then be reduced, and with a shift in resources there will be improved support in communities, fewer inappropriate admissions to acute mental health hospitals, and people will seek treatment at an earlier stage fearing less stigma and coercion.

We also believe there will be better health professional morale as they will see themselves as agents of change, as better helpers and supporters. By dismantling the mental health legislation could be the single most important action we take to finally give equal rights to people with lived experience and to eliminate stigma, especially among Māori.

## TE KETE POUNAMU RIGHTS

We seek the guarantee of the following rights to Māori with Lived Experience:

1. The right to be respected as Tangata Whenua ( First Peoples) of Aotearoa.
2. The right to be treated with due dignity and respect.
3. The right to have access, without discrimination, to all social and health services.
4. The right to enjoy the highest standard of physical and mental wellbeing.
5. The right to self-determine and self-direct preferences for my care, support and who I would like involved in my recovery.
6. The right to holistic, strengths based, whānau centred, Māori health models and therapies.
7. The right to receive the best possible care, treatment and attention according to the higher standards of technology and ethics.
8. The right to be informed about Mental Health Legislation, its role and consequences.
9. The right to accept or reject assessment and treatment.
10. The right to access acute mental health care options without the use of Compulsory Mental Health legislation.
11. The right to confidential treatment of my clinical history, and to have access to it.
12. The right not to be discriminated against on the basis of my mental wellbeing or unwellness.
13. The right to receive support from Māori health professionals, programmes and services.
14. The right to have free access to all available information and communication.
15. The right to be treated in a therapeutic environment that assures less restrictive or coercive methods.
16. The right to receive priority treatment at the community level.
17. The right of my whānau to be included in my mental health care and for them to be supported as they need.

### Ngā mihi nui

Thank you to the Māori Lived Experience Leaders who contributed their wisdom to this submission about the Repeal, Replace and Remove of the Mental Health Act.

On behalf of Te Kete Pounamu, Supported by Te Rau Ora.

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