Submission to the Health Committee: Mental Health Bill

As the independent advocate working for and with mokopuna[1] (children and young people), Mana Mokopuna – Children and Young People's Commission (Mana Mokopuna)[2] welcomes the opportunity to submit on the Mental Health Bill.

Summary of our submission

1. Mental Health and Wellbeing is an important kaupapa for mokopuna in Aotearoa New Zealand.[3] We echo calls from mokopuna who are urging action to tackle the immense and enduring challenges in child and youth mental health in our country. We emphasise the importance of both prevention and response in the mental health space for mokopuna, and that sustained holistic efforts are needed.
2. Of particular relevance to this Bill is the right of the child to the enjoyment of the highest attainable standard of health.[4] This is a basic, fundamental right protected for all mokopuna under the UN Convention on the Rights of the Child (the Children's Convention). Protection of this right includes all sides of Te Whare Tapa Whā, including taha hinengaro (mental and emotional wellbeing).
3. Mana Mokopuna supports the intent of the Mental Health Bill (the Bill), and we endorse certain areas of the Bill which protect, uphold and safeguard the rights of mokopuna. We also recommend that further work is done to strengthen some aspects of the Bill. This submission provides recommendations that amplify mokopuna, whānau, kaimahi and experts in mental health spaces.
4. We continue to hear from mokopuna that there is no 'one size fits all' approach to addressing mental illness. The Bill must put mokopuna at the centre of decision-making about their own care, and ensure that whānau are well informed, involved and supported throughout the journey to wellness.[5]

Introduction

5. Mana Mokopuna welcomes the objective of the Mental Health Bill (the Bill) to create a modern legislative framework for compulsory mental health care. However, we recommend the Bill goes further to support change for mokopuna and tangata whai ora that will be as high-impact as possible.
6. We endorse that the Bill refers to the rights of children and young people, establishes a complaints process and reduces restrictive practices such as seclusion. Alongside this, we have identified that further work needs to be done to uphold the rights of mokopuna in this context, urging that the repeal and replacement of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act) presents a significant opportunity to act on the recommendations outlined in *He Ara Oranga*.[6]

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[1] At Mana Mokopuna we have adopted the term 'mokopuna' to describe all children and young people we advocate for. 'Mokopuna' brings together 'moko' (imprint or tattoo) and 'puna' (spring of water). Mokopuna describes that we are descendants, and or grandchildren, and how we need to think across generations for a better present and future. We acknowledge the special status held by mokopuna in their families, whānau, hapū and iwi and reflect that in all we do. Referring to children and young people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from, matters for their identity, belonging and well-being at every stage of their lives.

[2] Mana Mokopuna – Children and Young People's Commission is the independent Crown entity with the statutory responsibility to advocate for the rights, interests, participation and well-being of all children and young people (mokopuna) under 18 years old in Aotearoa New Zealand, including young persons aged over 18 but under 25 years if they are, or have been, in care or custody.

[3] See, for example, appendix-three-gathering-voices-youth-plan-literature-review.pdf (myd.govt.nz); You need to get in early - voices report Mana Mokopuna; "A place to talk peacefully: Mokopuna voices on healing from family violence and sexual violence in Aotearoa | Mana Mokopuna;

[4] https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child#Article-24

[5] This has been emphasised, for example, through the following reports which are central to the evidence-base on this kaupapa: He Ara Oranga : Report of the Government Inquiry into Mental Health and Addiction | Mental Health and Addiction Inquiry; Meeting the mental health needs of young New Zealanders — Office of the Auditor-General New Zealand; Under One Umbrella. Integrated mental health, alcohol and other drug use care for young people in New Zealand

[6] Chapter 11: Mental Health Act reform | Mental Health and Addiction Inquiry

7. Mana Mokopuna is a National Preventative Mechanism (NPM) under the Optional Protocol to the Convention against Torture (OPCAT). This means we access and monitor places where mokopuna are deprived of their liberty across Aotearoa, which includes youth mental health facilities. In the 2022-23-year, Mana Mokopuna OPCAT monitoring of youth mental health facilities found the following issues requiring action in these spaces:

    - The ongoing lack of community-based placement options;
    - Lack of appropriate complaints processes;
    - Inappropriate nature of some physical settings for mokopuna in some in-patient facilities;
    - Shortage of specialist staff to meet the needs of mokopuna; and
    - Varying cultural capacity and capability across sites.[7]

8. We strongly urge the Health Committee to place a central focus on mokopuna in the development of this Bill, and to consider the impact of mental health distress amongst whānau members on mokopuna. This focus is particularly crucial given that in Aotearoa New Zealand:

    - mokopuna (aged 0 to 18 years) have the longest wait times for access to specialist services; and
    - young people (aged 19 to 24 years) have higher ambulance and ED presentations than other age groups.[8]

    Like any health issue, mental health can quickly deteriorate without appropriate treatment. We advocate for prevention and early intervention practices, particularly for mokopuna who face mental distress and illness. Therefore, the Bill must be supported by policies, services and practices which address the root causes of mental distress for mokopuna.[9]

9. We further urge the Health Committee to recognise the inequitable mental health experiences of mokopuna in Aotearoa New Zealand and the ethnic and socio-economic disparities present. In particular, we draw attention to the inequitable mental health experiences of Māori, Pacific, Asian mokopuna, those in high deprivation communities, males, females[10] and Rainbow mokopuna,[11] mokopuna who are care-experienced,[12] and mokopuna whaikaha.[13]

10. To adequately address issues outlined in landmark mental health and mental health-related reports such as *He Ara Oranga*, *Meeting the mental health needs of young New Zealanders*, *Under One Umbrella*, *Whanaketia* and *Kua Tīmata Te Haerenga | The Journey Has Begun*, the Government must ensure the Bill meets international children's rights and human rights standards that New Zealand has ratified and agreed to be duty-bound by, and gives effect to Te Tiriti o Waitangi.

11. It is essential that the Bill is supported with clear guidelines, an adequate budget of financial investment into mental health – including a specific focus on mokopuna – and a clear, actionable plan to address mental health workforce shortages and capability concerns.

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[7] 2022/23 Annual report of activities under the Optional Protocol to the Convention against Torture (OPCAT) | Mana Mokopuna

[8] Kua Tīmata Te Haerenga | The Journey Has Begun report downloads | Te Hiringa Mahara—Mental Health and Wellbeing Commission

[9] Please refer to our Submission on the Suicide Prevention Action Plan to read more about addressing the root causes of mental distress for children and young people and supporting evidence: https://www.manamokopuna.org.nz/publications/submissions/submission-to-the-ministry-of-health-on-the-draft-suicide-prevention-action-plan-2025-29/

[10] See, e.g. Rapid and unequal decline in adolescent mental health and well-being 2012-2019: Findings from New Zealand cross-sectional surveys — Youth19 - A Youth2000 Survey – which highlights sharp increases between 2012 and 2019 particularly among female, Māori, Pacific and Asian students and those living in socio-economically deprived neigbourhoods. See also: Koi-Tu-Promoting-Resilience.pdf (2024).

[11] See, e.g. findings of the Identify Survey: community_advocacy_report.pdf

[12] See, e.g. Young people who have been involved with Oranga Tamariki: Mental and physical health and healthcare access — Youth19 - A Youth2000 Survey

[13] See further discussion: Negotiating Multiple Identities: Intersecting Identities among Māori, Pacific, Rainbow and Disabled Young People — Youth19 - A Youth2000 Survey

What we have heard from mokopuna

> But being under the Act has never, like, has always made me so, so much worse and (my doctor) knows that. And so (they) have learnt how to deal with me in a way that I will somehow agree to the treatment without agreeing to the treatment. But they know how I work because every time I've been under the Act, u-huh, doesn't go well. Like it just makes you so much worse."
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> - Mokopuna, OPCAT Monitoring Report (mokopuna mental health), February 2024[14]

12. Mana Mokopuna's OPCAT monitoring reports looking at the care and treatment of mokopuna in the mental health space (in places where mokopuna are deprived of their liberty) highlight that **some mokopuna feel that being detained under the Act is a barrier to them being involved in decisions about their treatment, and has created obstacles for them on their journey to wellness**. We have heard from some mokopuna that this can include them having more restrictive conditions than other voluntary patients on being able to leave the ward. Some mokopuna have also shared they sometimes feel like they have little control in their treatment plans.[15]

13. In one mental health facility that Mana Mokopuna has monitored, **we heard about the positive impact of advocates for mokopuna in the mental health space**. Mokopuna have shared with us that they appreciated the mahi that Health New Zealand Te Whatu Ora Consumer Advocates do, and have mentioned that advocates having lived experience was important to them. They felt that they were understood, listened to, and that their concerns were communicated to the leadership team (of the facility they were living in) by the advocate in a timely manner.[16,17] This aligns with the findings from *He Ara Oranga*, which recommends enabling full inclusion of lived experience into leadership and the mental health workforce.[18]

14. **Mokopuna who we have heard from throughout Aotearoa New Zealand – in a general sense – have told us that the most important thing to them is their whānau and families**.[19] Reflecting these views, two of Mana Mokopuna's four strategic advocacy areas are 'Thriving families and whānau' and 'Growing up safe and well'.[20] Through these advocacy areas, among other things, we highlight and advocate about the importance of mental health to mokopuna, as this is an issue mokopuna have told us matters in their world. We highlight the importance of the involvement of, and clear communication with whānau, as this is vital to ensure mokopuna and their trusted people understand the legal requirements. Many whānau have described the process under the current Act as 'traumatic' with little information provided to them about what the Act meant or what level of involvement or input they could have into plans relating to their mokopuna. However, for some whānau, being under the Act meant that mokopuna have increased access to support services and expedited professional assessments.[21]

15. **Whānau and mokopuna have told us that having mokopuna voice in the decision-making process and mokopuna having ownership of their care - gives assurances that the best interests of mokopuna are elevated and stay at the centre of mental health care provision.** For example, Nga Taiohi involves whānau and mokopuna in decision-making and kaimahi in this facility take the time to walk them through treatment plans and to discuss the ways that they can support mokopuna. They also run weekly patient multi-disciplinary team hui that includes mokopuna and their whānau, which is also supported by mokopuna-friendly documentation.[22]

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[14] Ngā Kākano Adolescent Inpatient Unit OPCAT Monitoring Report | Mana Mokopuna
[15] Ibid
[16] Ibid
[17] N.B., this was a finding from one facility. Concerns remain regarding independent advocacy and the use of the general hospital complaints process.
[18] https://mentalhealth.inquiry.govt.nz/assets/Summary-reports/He-Ara-Oranga.pdf
[19] What Matters Most in your World? Survey, Mana Mokopuna 2023. Voices of mokopuna | Office of the Children's Commissioner | Mana Mokopuna
[20] As outlined in Mana Mokopuna's Statement of Intent Our Statement of Intent 2024 - 2027 | Mana Mokopuna – the other two strategic advocacy areas that we are focusing on are: A strong start in life; and Participating in what matters to me.
[21] Ngā Kākano Adolescent Inpatient Unit OPCAT Monitoring Report | Mana Mokopuna
[22] Nga Taiohi Youth Forensic Mental Health Unit OPCAT monitoring report, May 2023 | Mana Mokopuna

The importance of upholding children's rights throughout the Bill and its implementation

16. We remind the Health Committee of the importance of upholding mokopuna rights under the UN Convention on the Rights of the Child (Children's Convention),[23] including Article 12 which establishes the right for mokopuna to be involved in decisions that impact them.[24]

17. This right to participation applies to policy and legislative developments, such as the Bill, through to individual decisions about their own care and treatment. Decisions under the Bill and in mental health spaces should be made with mokopuna informed consent, proactively facilitating their participation and ensuring their voice and views are taken seriously, in ways that fulfil their best interests, and made with the appropriate involvement of their whānau, family and trusted people, who must also be provided with appropriate information to inform their understanding.

Giving effect to Te Tiriti o Waitangi and utilising Kaupapa Māori approaches to address the overrepresentation of Māori under the Act

18. We are concerned with the overrepresentation of mokopuna Māori who experience mental illness and are detained under the Act. For example:
    - In 2020/21 there were 311 children and young people, aged 16 years or younger, under the Act.
        - Of those, 41% were Māori.
    - There were 32 young people, aged 16 years or younger, who experienced seclusion.
        - Of those, 50% were Māori.[25]

19. *Te Huringa* highlights critical inequities for tangata whaiora Māori under the Act. Māori face disproportionately high rates of coercive, harmful practices, such as solitary confinement and community treatment orders, along with persistently higher applications of the Act.[26] Noting that in 2022, Māori were 5.5 times more likely to be secluded than non-Māori.[27]

20. It is of great importance to engage with whānau and mokopuna Māori on their experiences in mental health spaces and their views on the Bill, and that these meaningfully shape the Bill. Feedback from tangata Māori in a research report from Te Aka Whai Ora highlights that the Act has caused great harm and trauma, and is also inconsistent with Te Tiriti o Waitangi.[28]

21. Evidence shows that approaches grounded in kaupapa and te ao Māori are highly effective at de-escalating inpatient situations and helping to avoid the use of seclusion and restraint in compulsory mental health care.[29]

22. Mana Mokopuna's OPCAT monitoring in mental health facilities shows that while some facilities are committed to cultural practices and mātauranga Māori, more work is needed to equitably support all mokopuna Māori in mental health settings. Cultural models, capability, and practice vary across facilities, but those employing kaimahi Māori and with a clear commitment and vision for the hauora outcomes of mokopuna Māori tend to enhance cultural capability and create environments where mokopuna Māori can thrive.[30]

23. Mana Mokopuna therefore advocates that the Bill should outline whakapapa as a principle of care. This means supporting mokopuna Māori to be cared for by their whānau, hapū and iwi or kaimahi Māori who are trained with the appropriate professional skills to support the positive hauora

[23] Convention on the Rights of the Child | OHCHR
[24] https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child#Article-12
[25] 2024-05-02-Ki-te-Whaiao-proactive-release-final-version.pdf
[26] MHWC-Te-Huringa-Service-Monitoring-Report.pdf (2022).
[27] 2024-05-02-Ki-te-Whaiao-proactive-release-final-version.pdf
[28] Ibid
[29] 2024-05-02-Ki-te-Whaiao-proactive-release-final-version.pdf
[30] 2022/23 Annual report of activities under the Optional Protocol to the Convention against Torture (OPCAT) | Mana Mokopuna

outcomes of mokopuna Māori. We advocate for kaimahi Māori to be professionally supported with cultural safety mechanisms in place.

24. Please refer to the Mana Mokopuna submission on the Suicide Prevention Action Plan which provides a wider Te Tiriti o Waitangi analysis on mental health, from a mokopuna perspective.

Mokopuna rights and recent UN Treaty Body Concluding Observations to Aotearoa New Zealand

25. Section 38 of the Bill covers the rights of children and young people and highlights the importance of mokopuna receiving care from child and adolescent mental health services. The inclusion of a section on children's rights in the Bill emphasises that the Government has a clear duty to protect and uphold mokopuna rights in mental health settings. Mana Mokopuna strongly welcomes the inclusion of an explicit provision in the Bill focusing on mokopuna.

26. However, we advocate for this to be extended further to ensure the rights of mokopuna are upheld in line with the Children's Convention.

27. Mana Mokopuna advocates for the following specific children's rights under the Children's Convention to be key considerations in the further development of the Bill, including extending section 38:

- Article 2 – Right to non-discrimination
- Article 6 – Right to life, survival and development
- Article 12 – Right to participate in decisions that impact them
- Article 23 – Right of mokopuna whaikaha to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.[31]
- Article 24 – Right to the enjoyment of the highest attainable standard of health
- Article 37 – Right to be protected from torture or other cruel, inhuman or degrading treatment or punishment.

28. We urge the Committee to look to guidance from the Committee on the Rights of the Child (UN Committee) on implementing the right of the child to the enjoyment of the highest attainable standard of health (Article 24). *General comment No.15* is focused on this kaupapa, available here.

29. A children's rights-based approach respects the responsibilities, rights and duties of parents, whānau, families, and communities.[32] Mokopuna wellbeing is intrinsically linked to their whānau and relationships in their communities. The Bill must recognise the essential role of parents, caregivers and whānau of mokopuna in decisions about treatment and recovery.

30. Supported decision-making should involve fully informing both the mokopuna, and their whānau, nominated persons or trusted people, about all the options and information available to them, communicated in a manner that is appropriate to their age and maturity in line with Article 12 of the Children's Convention. It is important that the Bill provides for age-appropriate and mokopuna- and whānau-friendly information throughout every step of their care to ensure they understand the circumstances of their care under the Act and throughout their treatment. This aligns with a children's rights-based approach and supports mokopuna to be equipped with knowledge for their wellness journey into the future. This is also essential to support their right to participate, established by Article 12 of the Children's Convention.

[31] Please also see Article 7 of the UNCRPD on the rights of Children with disabilities here: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities#article-7

[32] https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child#Article-5

Specific recommendations to Aotearoa New Zealand made by UN Treaty Bodies

31. In the UN Committee on the Rights of the Child's Concluding Observations on the review of New Zealand's sixth periodic report under the Children's Convention (2023), the UN Committee on the Rights of the Child made several recommendations to the State to improve mental health care and address the root causes of suicidality and mental distress.[33] It is crucial that the Health Committee considers these recommendations from the specialist expert international body relating to children's rights, as the recommendations made have a direct bearing on the Bill and its context.

32. We have summarised the most relevant recommendations for the Health Committee's consideration:

    - The UN Committee is concerned that there are not enough mokopuna-friendly ways for children to report abuse, or enough services to help them recover from violence, trauma, or abuse, including mental health support.[34]
    - The UN Committee is also deeply concerned for mokopuna and their exposure to higher risks of suicide, and of experiencing sexual and domestic violence, school bullying, mental illness, homelessness and transient housing situations.[35]
    - Mokopuna atawhai (care-experienced children), particularly mokopuna atawhai Māori, should have access to mental health and therapy services, and efforts should be made to help them return to their families and communities.[36]
    - The Mental Health and Wellbeing Commission should focus on children's mental health, paying special attention to inequalities faced by Māori, Pasifika, and rainbow children. The State should also prioritise providing affordable, high-quality, and age-appropriate mental health and counselling services in a timely way.[37]

33. Furthermore, the 2022 Concluding Observations from the United Nations Committee on the Rights of Persons with Disabilities recommended New Zealand take immediate action to eliminate the use of solitary confinement, seclusion, physical and chemical restraints, and other restrictive practices in places of detention.[38]

34. In relation to our NPM function to monitor mental health facilities, we also guide the Committee to OPCAT and the Committee Against Torture's Concluding Observations 2023 as summarised below:

    - Explicitly prohibit the use of force, including physical restraints, and of pepper spray and spit hoods against children under supervision and promptly investigate all cases of abuse and ill-treatment of children in detention and adequately sanction the perpetrators.
    - Immediately end the practice of solitary confinement for children in places of detention, including informal solitary confinement.
    - Provide children with information about their rights, ensure that they have access to effective, independent, confidential and accessible complaint mechanisms and legal aid and protect complainants from any risk of reprisals.

35. As a States Party to these international human rights instruments, the New Zealand government has an obligation to implement and follow the recommendations from the United Nations treaty bodies, alongside upholding Te Tiriti o Waitangi.

36. We also refer back to the overview of key concerns found through Mana Mokopuna's OPCAT Monitoring Reports earlier in this submission focusing on mental health spaces where mokopuna are deprived of their liberty. These findings highlight many of the aspects recommended for action by the New Zealand government through the recent UN Treaty Body concluding observations under the multiple international human rights treaties discussed above.

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[33] tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FNZL%2FCO%2F6&Lang=en

[34] CRC/C/NZL/CO/6 para 23

[35] CRC/C/NZL/CO/6 para 15

[36] CRC/C/NZL/CO/6 para 28(a)

[37] CRC/C/NZL/CO/6 para 32(c)

[38] CRPD/C/NZL/CO/2-3

Addressing the drivers of mokopuna mental distress is an essential part of mental health reforms

37. Mokopuna have repeatedly called on the Government to address the high rates of mental distress and for the government to prioritise mental health reform to ensure an equitable and accessible mental wellbeing system.[39]

38. The evidence illustrates that mokopuna experiences of mental distress are linked to a wide range of causes and effects, such as childhood hardships and trauma, poverty, family violence, sexual violence, racism and discrimination, and many other stresses, such as uncertain futures, the climate crisis, online harm and intergenerational outcomes.[40]

39. We urge the Health Committee to invest in further work to address ethnic and socio-economic disparities for tangata whai ora. We raise the following evidence for your consideration:
    - Rangatahi Māori are 56% more likely to be admitted to hospital for self-harm than non-Māori and non-Pacific.[41]
    - Pacific peoples in Aotearoa New Zealand have higher rates of mental disorder than the general population yet, are less likely to access mental health services than all other New Zealanders (25.0 per cent compared with 58.0 per cent of non-Pacific overall).[42]
    - More than one in three mokopuna whaikaha report clinically significant depressive symptoms. They also face major inequities compared to their peers, including increased concerns about housing, poor healthcare access, ethnic discrimination by healthcare providers and feeling safe at school.[43]
    - In 2019, 30% of Asian girls (up from 16% in 2012) and 19% of Asian boys (up from 9% in 2012) reported significant depressive symptoms.[44]
    - Almost two thirds (64%) of rainbow young people had thought about killing themselves in the past 12 months. Just over one quarter (29%) had made a plan about how they would kill themselves, and one in ten (10%) had attempted suicide.[45]
    - For rainbow mokopuna involved with Oranga Tamariki, one half are affected by poor mental health, and for takatāpui Māori this figure is slightly higher at 53%.[46]
    - Mokopuna atawhai are more than four times as likely to have attempted suicide in the last year, and more than twice as likely to have been unable to access a health provider when they needed to.[47]

40. Community-based interventions play a vital role in suicide prevention and addressing mental distress.[48] We advocate for community-led, culturally-responsive and mokopuna-specific mental health support to address such inequities.[49] This form of support is incredibly important for mokopuna Māori and Pacific mokopuna, as both groups experience mental distress at rates far worse than their non-Māori and non-Pacific counterparts. For example, both mokopuna Māori (13%) and Pacific mokopuna (12%) are four times more likely to attempt suicide than Pākehā mokopuna (3%).[50]

[39] https://www.mhmi.org.nz/the-open-letter

[40] Leveraging 25 Years of mental health research from the Youth2000 survey series — Youth19 - A Youth2000 Survey Youth Wellbeing Insights Report | Te Hiringa Mahara—Mental Health and Wellbeing Commission (mhwc.govt.nz)

[41] mental-health-inequities-for-maori-youth-a-population-level-study-of-mental-health-service-data-open-access.pdf

[42] Pacific peoples, mental health service engagement and suicide prevention in Aotearoa New Zealand

[43] https://www.youth19.ac.nz/publications/needs-and-opportunities

[44] Ibid

[45] suicide-among-asian-young-people-aged-under-25-years-in-aotearoa-new-zealand-different-methods-warrant-different-preventive-init.pdf

[46] https://www.youth19.ac.nz/publications/needs-and-opportunities

[47] Ibid

[48] Developing community-based mental health services

[49] Strengthening-community-based-suicide-prevention-initiatives-for-Pacific-Islands-people-in-Aotearoa-New-Zealand.pdf and The Tihei Rangatahi Research Programme: tailoring a community-based youth empowerment programme for rangatahi Māori

[50] Achieving equitable mental wellbeing for Māori and Pasifika youth – Koi Tū: The Centre for Informed Futures

Conclusion and recommendations

41. All mokopuna have the right to the highest attainable standard of health, and Aotearoa New Zealand, as a States Party to the Children's Convention, is duty-bound to take measures to uphold this right. Mana Mokopuna supports the general intent of the Bill; however, we advocate for the Bill to go further to truly reflect a human rights-based approach. Please see our specific recommendations outlined below highlighting areas for further strengthening and endorsement regarding specific areas of the Bill.

Mana Mokopuna recommends that the Committee further recommends strengthening the Bill in the following ways:

1. **Incorporates findings from Mana Mokopuna OPCAT Monitoring of mental health facilities in the consideration of the Bill.** This includes the lack of: community-based placement options; a mokopuna appropriate complaints process; mokopuna-friendly physical in-patient facilities and settings; kaimahi and specialist staff; and the varying cultural capacity and capability across sites.
2. **In section 38 of the Bill, include specific reference to the specific rights under the Children's Convention** which are particularly relevant to the care of mokopuna under the Bill, including rights for mokopuna to be informed about every step of their care.
3. **Add a requirement in the Bill to make a mokopuna- and whānau-friendly version of the Mental Health Act and ensure that there are mechanisms for mokopuna to be informed about their care under the Act,** by expanding accessibility of information through an 0800 number/free txt service or similar tool which provides timely information; and including a provision for child-friendly and age-appropriate mechanisms in section 16 regarding patient participation.
4. **Include definitions in the Act for the following terms:**
    - **Health practitioner** – which should for the purposes of the Act, include reference to mental health expertise.
    - **Seclusion** – to support the restriction of seclusion and ensure consistent practice as complemented by the guidelines.
    - **Forms of restraint** - including chemical, physical/mechanical, environmental restraint.
5. **Add a section on restraint into the Bill** which includes reference to the guidelines and the different types of restraint. We advise that the Bill should refer to types of restraint specific to children and young people, as this is commonly used in practice. It is also vital that any use of physical restraint is subject to robust mandatory reporting, with all instances of restraint appropriately documented and recorded, and we suggest quarterly proactively published reporting at a minimum to increase transparency around the use of this practice.
6. **Explicitly state in the Bill that environments where mokopuna are detained should be therapeutic, safe, and healthy.** These environments must provide for the rights of mokopuna, including access to green spaces and sunlight, outdoor recreation, and contact with whānau.
7. **Throughout the Bill, enable further family and whānau involvement in the journey of mokopuna to wellness.**
8. **Throughout the Bill when referring to kaimahi, independent support persons, advocates and those journeying alongside children and young people, include specific reference to expertise in child and adolescent mental health** (including youth development).
9. **Include a requirement to have a mokopuna-focused kaimahi Māori mental health specialist role and/or Kaumātua in every secure mental health facility** to support mokopuna Māori to thrive, uphold tikanga Māori and enhance wellbeing, particularly taha wairua.
10. **Refer to 'informed consent' rather than 'consent'** to be consistent with *He Ara Oranga* and the principles and provisions of the Bill.
11. **Refer to the guidelines throughout the Bill** given their role in supporting implementation, and where appropriate setting timeframes or parameters for the review of these guidelines.

12. **Incorporate relevant recommendations from *Whanaketia - Through Pain And Trauma, From Darkness To Light***, the final report of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions.

13. **Increase funding to ensure all mental health facilities are fit-for-purpose and can operate to meet the rights, wellbeing and interests of mokopuna.** As noted earlier, it is evident throughout Mana Mokopuna's OPCAT monitoring that most facilities do not have the resources, spaces or material conditions to fulfil mokopuna therapeutic, safety and basic needs. To ensure all facilities are fit-for-purpose, **include a requirement to annually review the quality of facilities**.

14. **Incorporate the requirement for an annual report to be prepared and published specifically focusing on the implementation of the Bill as it relates to mokopuna.**

15. **Review the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to align with the provisions and principles of the Mental Health Bill** and ensure the changes meet the standards of the Bill and ensure the rights, wellbeing and interests of mokopuna and mokopuna whaikaha. We advocate for comprehensive reform of the 2003 Act, in particular regarding upholding the rights of mokopuna and preventing the use of seclusion.

16. **Mana Mokopuna is available to work with the Select Committee or the Ministry of Health or Te Hiringa Mahara on a best practise continuum of care map** for children and young people accessing services to ensure choice and accessibility.

Mana Mokopuna recommends that the Committee undertakes *further work* to ensure the rights, wellbeing and interests of mokopuna and tangata whai ora, by:

17. **Underpinning the rights of mokopuna and tangata whai ora in the Bill by including mandates under international human rights mechanisms,** including in Subpart 4 of the Bill on the Rights of Patients, to include specific reference to the Universal Declaration of Human Rights, the Children's Convention, the Convention on the Rights of Persons with Disabilities, the UN Declaration on the Rights of Indigenous People and the Convention Against Torture and OPCAT.

18. **Mitigating the reduction and elimination on the use of restrictive practices by including definitions in the Bill and supporting alternative therapeutic models and tools.** We are pleased to see that the Bill will ban seclusion for mokopuna under the age of 18, however, we do not wish to see increased use of restraints and force as an alternative. Therefore, more work needs to be done to ensure the system is set up to ban seclusion for mokopuna and that kaimahi are prepared to be able to implement alternative, human rights-consistent models.

19. **Incorporating all of the findings and recommendations from *He Ara Oranga* to transform the Mental Health Act and ensure it aligns with a rights-based approach, supported decision-making and informed consent.**

20. **Ensuring that advocates are guaranteed under the Act.** We commend that the Bill provides for the entitlement of an advocate, however we believe this should be strengthened by guaranteeing the appointment of an advocate if one is requested. For mokopuna, we advocate for this to be strengthened by ensuring their advocates are youth-focused and have lived-experience of being in the Mental Health system.

21. **Going a step further to allow for youth lived experience advisors and peer support workers to provide mokopuna-specific support.** For example, by enabling organisations like VOYCE Whakarongo Mai, The Peer Tree and Kites Youth Peer to access mental health facilities.

22. **Strengthening section 5 of the Bill regarding Te Tiriti o Waitangi by:**
    - Updating the text to 'give effect to Te Tiriti o Waitangi' rather than giving effect to the principles.
    - Aligning the Bill with findings from *Te Rau Ora*, *Wai 2575* and *He Ara Oranga*.
    - Including an overarching provision regarding whakapapa as a principle of care to support mokopuna Māori to be cared for by their whānau, hapū and iwi or kaimahi Māori.

- Updating section 164(4)(b) and 174(3)(b) to include traditional Māori practices to promote wellbeing and healing in addition to knowledge of tikanga and mātauranga Māori.

23. **Adding methods of care to section 43(4)(a)(iii) in addition to cultural considerations.**
24. **Updating section 49(2)(b) to ensure that there is record being kept of the other strategies attempted before seclusion, as well as including a provision under section 49(3)(b) to ensure the room is safe, and to include reference to the Guidelines in this section.**
25. **Investing in more community-based placement options alongside section 53 of the Bill on the release from compulsory care**. We advocate for the inclusion of transition plans back to community following the release of mokopuna from mental health facilities.
26. **Adding a requirement in section 112 of the Bill to ensure that mokopuna with mental-ill health should travel with a trusted person or a kaimahi that they know.**
27. **Extending the criteria for the Minister to establish an advisory committee to include under section 213(2) *expertise in child and adolescent mental health and wellbeing*.**

Mana Mokopuna endorses the following areas of the Bill:

28. The clear purpose of the Bill to provide for compulsory mental health assessment and care.
29. The principles that underpin the Bill to guide decisions about compulsory care.
30. The provision for supported decision-making and strengthening the role of family, whānau and other trusted people which includes the inclusion of a nominated person and/or independent support person and the establishment of hui whaiora.
31. Noting our earlier recommendations, the updates to the complaints process and the extension of the complaints process to people in voluntary care.
32. The new compulsory care criteria for a person with 'seriously impaired' mental health.
33. Noting our earlier recommendations, the following references to the rights of children and young people in section 38 of the Bill:
    - 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, are not placed in seclusion or given a restricted treatment;
    - Ensuring that patients under the age of 18 are not given electroconvulsive therapy unless in the case of an emergency;
    - Despite section 36 of the Care of Children Act 2004 or any other enactment or rule of law to the contrary, in respect of a patient who is 16 years of age or older, the consent of a parent or guardian to any assessment or care is not sufficient consent for the purposes of this Act;
    - 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, that the membership of the tribunal includes at least 1 person with appropriate expertise in child and adolescent development.
34. The requirement to publish an annual report on the implementation of Act.
35. The requirement to review the legislation within 5 years of commencement and then at 5-yearly intervals.

Appendix 1: Overview of concerns from our OPCAT Monitoring Reports

This appendix provides key findings from Mana Mokopuna OPCAT Monitoring Reports over the past few years in the mental health space. The key areas have been identified as requiring systemic change across the following themes:

Transition into community and inappropriate placements

Across facilities and the country, there is an on-going lack of appropriate community resourcing and placements for mokopuna to transition out of care. This is a vital part of creating pathways to health and wellbeing for mokopuna outside of a medical institution. When placements are not sourced, in some instances, this has led to the detainment of mokopuna beyond their presenting needs and treatment requirements. Additionally, a lack of resourcing and awareness amongst external organisations may result in mokopuna presenting with behaviour concerns which can lead to inappropriate admissions and placements. This is concerning as many mokopuna do not meet the threshold for placement within a mental health facility but are placed there due to lack of options in the community.

Recruitment, staff levels, training and support

> "Yeah, I think, we definitely need more nurses, that's just not a good, like an obvious thing. Like we don't have enough and often when someone's distressed, they need like three nurses, which means like everyone else is kind of stranded. So, it's hard." (Mokopuna, OPCAT Monitoring report)

Nationwide, there are on-going vacancies across many key roles to support the care and treatment of mokopuna in mental health facilities including mental health nurses, psychologists and other specialist roles in adolescent inpatient-units. Staffing levels and high-service demand feed into the risk of burn-out amongst kaimahi and are a barrier towards accessing on-going training and support to maintain their practice, which can have a ripple-down effect for the care of mokopuna.

Independent complaints system, advocates and mokopuna rights

Whilst some facilities have a form of a mokopuna complaints mechanism, there is an on-going need across mental health facilities to develop a mandated complaints system, which is both mokopuna-centric and completely independent of kaimahi and the facility. It is important that a complaints system is designed to meet the needs of mokopuna and does not fall under a generic health or hospital complaints system. There is also inconsistent access to independent advocates for mokopuna placed in mental health facilities. Advocates are important as they support mokopuna by advocating for their rights. When we have engaged with mokopuna, they have been vocal about their desire to connect with advocates and individuals with lived-experience for support.

Mokopuna and whānau need to have on-going opportunities for voice in their care and to feed into decision-making

> "If there was a way to make everyone agree to treatment. Because I believe that deep down in every single unwell person, every single unwell person you'll ever meet, I know there's a tiny, tiny, tiny, tiny part of them that wants help and wants to hold on, even if you can't find it. I think if professionals can learn how to reach to that tiny, tiny part and somehow make that stronger and convince people to agree to treatment and everyone was in here under their own will, like willingly, was in charge of their treatment, like, took the lead, I think that that would make them have more progress." (Mokopuna, OPCAT Monitoring report)

When mokopuna and whānau feed into decision-making about their care, this enables better engagement and outcomes within their treatment. By engaging with mokopuna and whānau, kaimahi were often able to clearly identify mokopuna needs, how to best support them as well as their areas of concern. Additionally, when there are quality relationships and interactions between kaimahi, mokopuna and whānau, this helps create a more positive experience for mokopuna whilst they are in care. It is important that when mokopuna are placed in facilities away from their whānau, that there is adequate and on-going support provided for them to be involved in their care.

Prioritising least restrictive practices

Whilst some mental health facilities have managed to eliminate the use of restrictive practices such as seclusion, this is not consistent across all facilities. Some spaces are focused on prioritising least restriction options, yet others demonstrate a high use of restrictive practices. It is important for facilities to eliminate restrictive practices so that mokopuna can experience rights-based care. We have observed that multi-disciplinary and therapeutic approaches support consistency in care for mokopuna. Alternatively, when mokopuna have access to de-escalation and sensory spaces in facilities, it supports them to safely self-regulate.

Incorporating cultural practices and roles has a positive impact when realised in practice

> "[There's] a lot more culture which I like. So, on Fridays we have, like, cultural group, so we make, like, last week I was in a meeting which was sad as they were making greenstone necklaces." (Mokopuna, OPCAT Monitoring report)

When cultural practices, models and roles were interwoven into the practice and care of mokopuna this had positive impacts for mokopuna of all cultures. Whilst some facilities successfully weave in kaupapa and te ao Māori practices, this was not a consistent finding across all mental health spaces. It was commonly identified that all kaimahi must uphold these practices to uphold a safe environment, however, the responsibility to develop cultural awareness often fell on kaimahi Māori who may not be resourced or responsible to do so within their role.