
Pae Ora (Healthy Futures) Bill

09/12/2021

Submission on the Pae Ora (Healthy Futures) Bill

1 Introduction

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (the **Law Society**) welcomes the opportunity to comment on the Pae Ora (Healthy Futures) Bill (**the Bill**). This is a significant Bill, which repeals and replaces the New Zealand Public Health and Disability Act 2000 in its entirety and provides for a new structure and accountability arrangements for the publicly funded health system.
- 1.1 The Law Society did not identify fundamental areas of concern in its review of the Bill. However, to be of assistance we have identified some areas that we consider could be clarified.
- 1.2 The Law Society does not wish to be heard in relation to this submission but is happy to engage further with the select committee or officials if that would be of assistance.

2 Part 2 – Key roles and health documents

Establishment of the Māori Health Authority

- 2.1 Clause 17 provides that the Māori Health Authority is an ‘independent statutory entity’.
- 2.2 We query whether it is intended that the Māori Health Authority is to be an ‘independent statutory entity’ such as Te Matawai (which was established under Te Ture mō Te Reo Māori 2016 (The Māori Language Act 2016)) or whether the intention is, in fact, to specify the Māori Health Authority is an ‘Independent **Crown** entity’.
- 2.3 We suggest that this is clarified. The uncertainty of what type of entity the Māori Health Authority is intended to be arises because the term *independent statutory entity* is not defined in the Bill. In section 7(1)(a) of the Crown Entities Act 2004 (CEA), the term “statutory entity” is defined as referring to three types of Crown entity – Crown agents, Autonomous Crown entities, and Independent Crown entities. Independent Crown entities are specified in Part 3 of Schedule 1 of the CEA, which also sets out the application of sections 161 – 165 of the Act to each named entity.
- 2.4 Section 4(1)(b) of the CEA states that a statutory entity is established by or under the entity’s Act and the entity’s Act may supplement or expressly modify or negate the provisions of this Act for that entity and its Crown entity subsidiaries. Clause 25 of the Bill specifies the provisions of the CEA that will apply to the Māori Health Authority – which supports the view that the intention may have been to establish an *independent Crown entity* in this case.
- 2.5 If the Māori Health Authority is a statutory entity under the CEA, it will need to be added to Schedule 1 of the CEA by way of consequential amendment. The Bill already adds Health New Zealand to Schedule 1, Part 1 as a Crown agent.
- 2.6 If the intention was not to provide for the Māori Health Authority as an Independent Crown entity, we note the potential for confusion that may arise in light of the interaction between the Bill and the CEA as outlined above and recommend that a definition is provided.

Clause 23 – Removal of members

- 2.7 Clause 23 provides for the Minister to remove a member of the board of the Māori Health Authority from office for any reason (with the agreement of the Hauora Māori advisory committee in the case of Māori Health Authority board members). Clause 56 contains similar wide-ranging powers to dismiss members of a board or a commissioner. While these appear to be sweeping Ministerial powers that could raise natural justice concerns, we note that clauses 11 and 54(6) of the Bill provide that the Crown Entities Act applies. This means that removal could only be possible for just cause and the process for removal must comply with the principle of natural justice. We consider that this provides an important degree of balance to this decision-making process.

Consultation and collaboration with ‘social sector agencies’

- 2.8 The Bill includes a number of requirements for consultation and collaboration with ‘social sector agencies’ (clauses 13, 14, 18, 19 and 49). The term ‘social sector agency’ is not defined. In the absence of a definition or further guidance, it may be difficult for relevant parties to effectively engage with each other, and for the public to determine if the appropriate process has been followed. Without further guidance or a definition, it would also be difficult to challenge any decision to consult or not to consult with a particular agency or entity by way of judicial review.
- 2.9 We recommend that consideration be given to adding an inclusive definition of the term ‘social sector agency’ in the interpretation section of the Bill to assist in this regard.

New Zealand Health Charter

- 2.10 Clause 51 requires health entities to have regard to the New Zealand Health Charter when planning and contracting services. Clause 51(b) provides that a health entity must ‘report annually’ on how it has given effect to the Charter. The Bill does not specify who the report must be given to and does not require the reports to be published. This contrasts with other requirements in the Bill where information must be provided to the public, including Government Policy Statement on Health (clause 33); annual performance reports from Health New Zealand and the Māori Health Authority (clause 46); and the New Zealand Health Charter (clause 52).
- 2.11 While there may be reasons to have a different approach for Charter compliance information, we consider it is worth clarifying whether this is a deliberate policy choice in this case.

3 Other comments

Legal status of the Ministry

- 3.1 Clause 89(3) and Schedule 5 provide for the Ministry to exercise the powers of the Minister. On the basis that ‘Ministries’ do not have formal legal status we recommend changing this to ‘Director-General, or such other person as the Director-General delegates his functions and responsibilities to in writing’.

Minor drafting issues

- 3.2 Clause 33(1) appears to be missing an ‘as’ (‘As soon practicable’ should presumably read ‘as soon *as* practicable’).

- 3.3 Clause 50(2) is missing a 'to' ('The purpose of the charter is provide' should read 'The purpose of the charter is *to* provide common values, principles and behaviours to guide...').
- 3.4 Clauses 50 and 52 – it is not clear why different language has been used in clause 50, which provides that the Minister is to 'determine' the Charter and in clause 52 where the Minister is to 'make' the charter.



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