

17 June 2016

Hon Simon O'Connor
Chairperson, Health Committee
Parliament Buildings
Wellington

Dear Mr O'Connor

Substance Addiction (Compulsory Assessment and Treatment) Bill

I thank the Health Committee for providing me this opportunity to comment on the Substance Addiction (Compulsory Assessment and Treatment) Bill (the Bill).

I support repeal of the Alcoholism and Drug Addiction Act 1966 and its replacement with the proposed Bill. The changes proposed were largely recommended by the Law Commission in its 2010 paper *Compulsory Treatment for Substance Dependence*. As the Law Commission noted, there are generally insufficient safeguards in the current legislation to protect the rights of people held under compulsory treatment orders.

The revised legislation will have beneficial privacy consequences for those affected by better respecting patients' rights and, potentially, the accuracy of information used to make assessment and treatment decisions. Provisions for review have been strengthened and the safeguards to protect the rights of people being treated under compulsion have been improved.

I am satisfied the Bill generally strikes a proportionate balance between privacy, public safety, and the wellbeing of individuals and their family and whanau. However, I consider the Bill could be improved with the addition of a new provision to better provide for timely information sharing with the other guardians of a patient's dependant children. This would ensure treatment decisions better reflect the context of the patient and their whanau or family.

Providing for more timely information sharing with other guardians of a patient's children

My Office has received complaints where patients subject to compulsory treatment orders under the Mental Health (Compulsory Treatment and Assessment) Act 1992 have been unhappy about poor communication between health practitioners or their representatives and other guardians of their children. This is a relatively rare issue as often the representative of the patient is also the guardian of the patient's children, but issues can arise when the patient and other guardian are estranged.

When my Office was consulted on the draft Bill, we recommended changes to two parts of the Bill to address this issue.

I am pleased to see that clause 51(1)(d) of the Bill provides for consultation with "*other individuals with guardianship over child or children of the patient*" as my Office suggested. I do not consider any further specification is needed.

Clause 12 of the Bill currently provides that every person and every court that exercises, or proposes to exercise, a power conferred by or under the Act in respect of a patient must be guided by specified principles, including that:

“the views of the patient and the views of the patient’s principal caregiver, welfare guardian (if the court has appointed one), and nominated person (if the patient has nominated one) should be ascertained and taken into account before the power is exercised, unless it is not reasonably practicable or in the best interests of the patient to do so”.

Unlike clause 51, this provision does not clearly specify consideration for the persons with specific guardianship responsibilities for the children of the patients subject to this Bill. I consider the Bill would be strengthened by extending clause 12 to provide for consultation with:

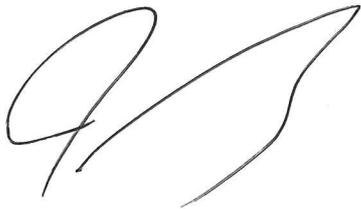
“any other individuals with guardianship over the patient’s children, before the power is exercised, unless it is not reasonably practicable or in the best interests of the patient to do so”.

Explicitly providing for information sharing with guardians of patient’s children who are not either the patient’s principal caregiver, welfare guardian or nominated person means that the patient’s children’s care can be organised more effectively while the patient is under compulsory treatment.

The Ministry has advised my Office that it supports inclusion of such a provision in the legislation and that it will make a recommendation to that effect in the Departmental Report.

I recommend to the Committee that it consider including the proposed new provision in this Bill.

I would be pleased to appear if that would assist the Committee in its considerations.

A handwritten signature in black ink, appearing to read 'John Edwards', with a large, sweeping flourish extending to the right.

John Edwards

Privacy Commissioner