

10 June 2020

Dear Members of Parliament

Protection for First Responders and Prison Officers Bill

Tuia te rangi e tū nei
Tuia te papa e takoto nei
Tuia i te here tangata
Tihei mauri ora
He hōnore, he korōria ki te atua ki te runga rawa
He whakaaro maha ki a rātou kua haere ki te wāhi ngaro
Rau rangatira mā, ānei ngā whakaaro me ngā kōrero nā Te Tūāpapa Hauora
Hinengaro

We write to express our concern about the Protection for First Responders and Prison Officers Bill. The Mental Health Foundation (MHF) did not provide a formal submission to the Justice Committee in February 2020, but now wish to raise concerns in light of the recent amendment to broaden the 'scene of an emergency' to include a hospital or other emergency facility, meaning the Bill would now apply to health practitioners working with people experiencing mental health crises and influenced by alcohol and other drugs in emergency department settings.

Nurses and other health practitioners face risks every day in providing care and treatment to those in need and there is no doubt their health and safety requires our protection. Although the risk of violence is not likely to be eliminated given the nature of the care provided, it can, and must, be minimised.

The proposed Bill assumes the threat of a future punitive measure will effectively prompt people experiencing serious mental distress or influenced by alcohol and other drugs to "think twice" (as stated in explanatory note). It assumes the actions of people who assault, or attempt to assault, health practitioners are rational, planned, deliberate and callous.

The reality is far from this and the retributive approach of the Bill will not help to reduce the rate of these types of incidents. And it appears many health practitioners and DHBs – under the current law – are already reluctant to refer violent incidents in inpatient units to the police and subsequent convictions are rare.ⁱ



We need to take a preventative and whole-of-system approach to reducing workplace violence

To affect any change, it is important to understand the complex interplay of factors that lead to situations where people being cared for in an emergency may assault or injure first responders, and, importantly, to look to address the gaps in the current mental health response chain.

Firstly, mental health problems do not make a person prone to violence. Myths about people who live with mental illness as violent, dangerous and unpredictable continue to thrive but the research shows people with experience of severe mental distress are less likely to be violent than the average citizen and in fact are more likely to be victims of crime than the general population.ⁱⁱ

However, self-medicating with alcohol and other drugs can increase the risk for violence, whether or not it occurs in concurrence with mental illness.ⁱⁱⁱ Emergency departments are not appropriate, or safe, facilities to provide care for people who are intoxicated by alcohol and other drugs. There is a clear need to address the lack of community mental health services such as detoxification centres where people can be properly supervised and supported when they are intoxicated.

Second, emergency departments were not set up for people in mental distress and as I've said before, "if you're distressed or frightened - sitting in a waiting room on a plastic chair for a few hours is not something that is going to be within your capabilities." Most emergency departments do not have the appropriate physical space so people can have their immediate needs addressed safely and privately or access to skilled mental health workers who can provide immediate support. We are aware it is particularly challenging for health practitioners when they come into contact with a person in distress for the first time, as would often be the case in an emergency department. Mental health services that have previous or regular contact with a person have the advantage of prior knowledge, including current medication, any mental health diagnosis, previous trauma, who their preferred support people are, and any preferences for assessment and treatment.



Police have made significant progress in reducing unnecessary detentions in cells for both intoxicated people and those experiencing mental distress, but further work is required to facilitate an appropriate health response that does not involve sending people to emergency departments. This is the approach espoused by *He Ara Oranga*, that when people come to the attention of police and are in custody, they will have access to trained mental health workers who can assess their immediate needs and make referrals as appropriate. We note the trial underway to reduce the number of those experiencing mental health distress being taken to hospital emergency departments by police when other options were preferable.^{iv} We fully support measures such as this and hope that such a trial, if successful, can be rolled out nationally so we do not see wide variation across the country in how police are able to manage these cases.

Third, we must continue efforts to increase access to timely support in the community that would prevent people ending up in a crisis situation in the first place. *He Ara Oranga* notes few initiatives aim to respond to serious distress and prevent people from 'tipping over' into crisis situations, and the current system fails to respond adequately to many people who are experiencing high levels of personal distress, often with a significant impact on their lives, but who do not meet the eligibility criteria for specialist services. We acknowledge the government has accepted and started to make inroads on *He Ara Oranga*'s recommendation to expand access to publicly funded mental health and addiction services for people with mild to moderate and moderate to severe mental health and addiction needs. But there is much more work to be done.

Lastly, we must address the inequities that Māori and Pacific peoples face in the mental health system, as clearly documented in *He Ara Oranga*.^v Māori are 30 percent more likely than other ethnic groups to have their mental illness undiagnosed and the outcomes for Māori who access mental health services are poorer. Even when they seek help, Māori experience obstacles to receiving timely help, especially during a crisis. Pacific peoples are more likely to experience mental distress than the total population but are also much less likely to have received treatment. Overall this suggests Māori and Pacific peoples are more likely to be acutely unwell and experience a mental health crisis, and the penalties imposed by this Bill are more likely to be disproportionately experienced by these groups.



This Bill will cause harm to the most vulnerable in our community

Rather than supporting people who are already vulnerable or marginalised, the Bill passes on a criminal conviction and a minimum prison sentence of six months. We know from New Zealand research on drug-related convictions that the added weight of a conviction "condemns [people] to a life of missed opportunities, stigma and often deepening of problems."^{vi} We also know incarceration itself may reduce life expectancy,^{vii} and people in prison may experience barriers to receiving health interventions with evidence that fewer than half of prisoners with a mental health diagnosis had had mental health treatment in the past year, with the lowest rates of treatment for substance-use disorders.^{viii} This means the pathway imposed by this Bill is damaging on two fronts; people will be less likely to get the help and support they need in prison and their future employment, income and travel prospects, and personal relationships due to the stigma of a conviction and prison may be damaged.

This Bill is counter to government policy, *He Ara Oranga*, and pragmatic 'health responses' increasingly accepted by the public

This Bill goes against Te Tiriti o Waitangi and the Crown's obligations to achieve equity for Māori. As stated above, Māori will be disproportionately impacted by the Bill's minimum sentencing provisions given other government failings to address the many factors that can lead to crisis situations for whānau.

It goes against the *He Ara Oranga* endorsed 'health not handcuffs' approach, which Parliament itself supported through amending our drug laws to officially allow police to take a therapeutic rather than punitive response to drug possession.

It goes against the shift towards trauma-informed care, and a whole-of-system approach that responds to people at risk with compassion, caring, and the protection of human rights.

It goes against the Government's program of criminal justice system reform and the specific target to reduce the prison population by 30 percent over the next 15 years (as at 2018).^{ix}



Importantly, it goes against the vision of how we can effectively support people in crisis set out in *He Ara Oranga*, our roadmap for the transformation of the mental health and addiction system. This vision sees:

- people who are seriously distressed and need immediate support receiving an immediate response from services led by caring, competent and skilled health, peer support and cultural workers
- immediate response services that can effectively de-escalate situations and support people into appropriate assessment and respite services, community hubs or inpatient service, and
- Police and emergency departments have access to skilled mental health workers.

Summary

We support the recommendations made by *He Ara Oranga* as the best way to address the underlying problems with the mental health and addictions system that are failing to prevent harm to health practitioners in the first place. **We urge members of parliament to look to *He Ara Oranga* for the questions they need to ask as they scrutinise this Bill, as well as for the solutions it provides.**

Ngā mihi,



Shaun Robinson

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- ^{iv} Stuff (11 May 2020) Health workers fear violence as police deliver more people to hospital emergency departments <https://www.stuff.co.nz/national/health/121449215/health-workers-fear-violence-as-police-deliver-more-people-to-hospital-emergency-department>
- ^v As cited in *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction* (2018) pages 70-71, and 84.
- ^{vi} Dr Fiona Hutton. Newsroom (8 May 2020). We can't ignore cannabis referendum. <https://www.newsroom.co.nz/2020/05/08/1161941/we-cant-ignore-cannabis-referendum>
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- ^{ix} Statement of Intent 2018-2022. Department of Corrections. https://www.corrections.govt.nz/resources/strategic_reports/statements-of-intent/statement_of_intent_2018-2022/our_strategic_direction