

27 September 2013

Ministry of Justice

## **Draft Periodic Report on the UN Convention against Torture**

Thank you for the opportunity to comment on the draft sixth periodic report (the Report) on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).

### **Background**

As Health and Disability Commissioner, I am charged with promoting and protecting the rights of health and disability services consumers, as set out in the Code of Health and Disability Services Consumers' Rights (the Code). One of my functions under the Health and Disability Commissioner Act 1994 is to make public statements in relation to any matter affecting the rights of health or disability services consumers.

I have made comments, set out below, on those parts of the Report that I consider may benefit from input from my Office. In preparing these comments I have been assisted by two senior members of my Office, Mental Health Commissioner, Dr Lynne Lane, and Director of Proceedings, Mr Aaron Martin.

I am pleased to note that my Office's oversight role, particularly in relation to mental health services, is referred to at various points throughout the Report.

### **Comments**

#### *Article 16*

#### *32: Mental health of prisoners and beds available*

The Mental Health Commissioner is concerned about the availability of appropriate treatment for people in prison with mental health and addiction problems, and considers that there is a need to significantly increase prisoners' access to such treatment. The Mental Health Commissioner also considers that action is needed to better support the recovery of prisoners who suffer from serious mental health and addiction problems, and to reduce the impact of their problems on their families, whānau and on society as a whole. In particular, the Mental Health Commissioner sees a need for increased mental health training for prison staff to ensure that prisoners are better supported. The Mental Health Commissioner has been discussing with the Ministry of Health and the Department of Corrections the need to work collaboratively to improve the provision of mental health services in prisons. In this regard I note that my Office made a submission to the Department of Corrections on its plan to improve outcomes for prisoners with mental health and addiction problems, and is supportive of that initiative.

#### *33: Steps to protect the mentally ill - seclusion*

The Mental Health Commissioner is concerned about the levels of seclusion and restraint used on individuals subject to compulsory treatment orders issued pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992. The rates of seclusion nationally

are decreasing but continue to be variable nationally, and are significantly higher in Māori and Pacific peoples. My Office has initiated a national project to review current progress in reducing the use of seclusion, and to develop recommendations on how to further eliminate its use. This is a goal that Mental Health Commissioners internationally have agreed to work collaboratively to achieve.

*33: Steps to protect the mentally ill – specific acts and their investigations and outcomes*

The Rapporteur has requested information about:

“...the measures New Zealand is taking to ensure that individuals with mental disabilities are not unreasonably detained and/or held in seclusion for unreasonable periods of time...whether acts by officials responsible for the cases identified were investigated...and...whether anyone received administrative or criminal penalties, and what they were.”

My Office has taken action in a case that may be relevant to this request for information.<sup>1</sup> In December 2008 a 43-year old woman (Ms A) complained to my Office that she had been incarcerated in a secure rest home without legal authority. Ms A had a complex personal history, which included severe psychological trauma, depression and alcohol abuse. An investigation of Ms A’s complaint was undertaken by the Deputy Commissioner, the results of which were publicly released in November 2010. The investigation established that Ms A had been admitted to a public hospital in a confused state in 2007. A psychiatric assessment concluded that she did not have the capacity to make decisions relating to her personal care and welfare. It was decided that an application should be made to the Family Court for a personal order under the Protection of Personal and Property Rights Act 1988 (the PPPR Act) for Ms A to be placed in an appropriate residential facility. The application was prepared, but never filed with the Court.

Three months later, the woman was discharged to a secure rest home caring mostly for older people with dementia, on the understanding that she was legally required to remain there. The placement was authorised by and funded through a government-contracted Needs Assessment and Service Co-ordination (NASC) agency. Ms A was assessed by the NASC agency three times over the following ten months. On each occasion she expressed her wish to leave the rest home and to live somewhere more suitable.

Nearly a year after her admission to the rest home, Ms A was assessed as being too well to be in a secure unit, and as competent in relation to her personal care and welfare. In the course of efforts by a local alcohol and drug service to arrange access to a residential alcohol rehabilitation programme, it was learned that the PPPR Act application had never been filed, and that there was no legal requirement for Ms A to remain in the rest home. Over the following two months, arrangements were made for her transition and, 14 months after her admission, she left the rest home.

The Deputy Commissioner’s report concluded that there had been multiple deficiencies in the care provided to Ms A. She had been effectively detained at the rest home when there was no legal right to do so, and this was neither in accordance with her wishes nor always appropriate for her needs. The Deputy Commissioner found that the District Health Board, the NASC agency, and the rest home had breached Mrs A’s rights under the Code.

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<sup>1</sup> Case reference: 08HDC20957

The Deputy Commissioner referred the NASC agency and the rest home to the Director of Proceedings. He filed proceedings against both parties in the Human Rights Review Tribunal for their breaches of the Code. In March 2012 the proceedings against both parties were resolved by negotiated agreement with compensation paid to Ms A's estate for the benefit of her daughter (Ms A had since died).<sup>2</sup>

The Deputy Commissioner's full report on this case is available on our website [www.hdc.org.nz](http://www.hdc.org.nz)

This case and its outcomes have been widely discussed throughout the New Zealand health and disability sector, with the result that health and disability service providers are now more aware of the issues it raises in terms of the legal basis for detention in such circumstances.

### **Conclusion**

I trust that you find these comments of assistance.

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<sup>2</sup> *Director of Proceedings v Taikura Trust* [2012] NZHRRT 3 (22 March 2012); and *Director of Proceedings v Aranui Home and Hospital Ltd* [2012] NZHRRT 4 (22 March 2012).